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Lorna Fox

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# RE-POSSESSING "HOME": A RE-ANALYSIS OF GENDER, HOMEOWNERSHIP AND DEBTOR DEFAULT FOR FEMINIST LEGAL THEORY

LORNA FOX\*

## ABSTRACT

The current credit crisis has brought the subject of subprime and other problematic debt to the forefront of many agendas – both political and personal. This article explores some of the underlying legal, theoretical, economic, and phenomenological issues associated with default and foreclosure, particularly as they affect women homeowners. The analysis is embedded in feminist discourse on *home*, from traditional critiques of the association between women and home to evolving conceptions of the benefits and the burdens of home for contemporary feminist theory. This article traces the ideas of "home" and "homeownership" for American women and considers how it might be appropriate to respond to the risks associated with challenges to affordable homeownership through the lens of feminist legal theory.

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\* Department of Law, University of Durham, 50 North Bailey, Durham, UK. I would like to acknowledge Professor Martha Fineman, Emory University, whose generous visiting fellowship scheme, *Gender, Sexuality and Family*, supported much of the research for this article. I am also grateful to Professor Dave Cowan, University of Bristol, UK, who provided some useful advice on this subject, and Dr. Erika Rackley, University of Durham, UK, for helpful comments on an earlier draft.

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## INTRODUCTION

It is difficult to overstate the importance of our homes, both in everyday life and, by extension, in law. Our homes provide the backdrop for our lives, and are often the scene or the subject of legal disputes. A recent analysis of home as a legal concept in the United States has described "an ideology of home where the protection of home and all it stands for is an American virtue."<sup>1</sup> In fact, it is not only home, in the sense of a dwelling place, but homeownership that has become an "American obsession," as "most Americans are willing to make dramatic sacrifices in order to own a home."<sup>2</sup> Many Americans are willing to take a second job, to give up time with their young children (placing them in child care), to take jobs further away from their homes, and to spend a large portion, sometimes more than half, of their monthly disposable incomes on mortgage installments.<sup>3</sup> The motivation for this willingness to sacrifice time, money, effort, and energy — to work harder — has been linked to two different types of goals: on the one hand, it has been linked to the pursuit of financial security, with homeownership regarded as the most effective form of wealth accumulation for most Americans;<sup>4</sup> and on the other hand, to homeownership as "a metaphor for *personal* and *family* security . . . giving people a stake in society and a sense of control over their lives. . . . [H]omeownership strengthens the social fabric."<sup>5</sup>

Yet, alongside these potential rewards, the risks that some borrowers are willing to take in order to finance the purchase of their homes, and thus to pursue this financial, personal, and family security, have been brought into sharp relief by the recent crisis in subprime lending.<sup>6</sup> Rising rates of mortgage delinquency and foreclosure

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1. D. Benjamin Barros, *Home as a Legal Concept*, 46 SANTA CLARA L. REV. 255, 255 (2006).

2. Joan Williams, *The Rhetoric of Property*, 83 IOWA L. REV. 277, 326 (1998).

3. *Id.*; see also FANNIE MAE, FANNIE MAE NATIONAL HOUSING SURVEY 3-4 (1996).

4. Williams, *supra* note 2, at 326-27.

5. *Id.* at 327 (quoting FANNIE MAE, FANNIE MAE NATIONAL HOUSING SURVEY (1992)).

6. See generally NAT'L CMTY. REINVESTMENT COAL., THE 2005 FAIR LENDING DISPARITIES: STUBBORN AND PERSISTENT II (May 2006) (describing the impact of high-cost loans — loans with an interest rate greater than the prevailing rate — on minorities, women, and low- and moderate-income borrowers) [hereinafter NCRC Report].

have focused the attention of borrowers, lenders, government agencies, non-profit groups such as the Center for Responsible Lending and the National Community Reinvestment Coalition, and the national and global media on the impact of mortgage defaults for the American housing market, the American economy, and even the global economy.<sup>7</sup> In a press release dated March 29, 2007, Representative Maxine Waters, Chairwoman of the House of Representatives Subcommittee on Housing and Community Opportunity, referred to the "growing evidence about the perils of the subprime lending market and the rise in foreclosures, with estimates as high as 2 million mortgage loan defaults predicted by years' end."<sup>8</sup> The Center for Responsible Lending has recently estimated "that 15.6% of all subprime loans originated since 1998 either have ended or will end in foreclosure and the loss of homeownership,"<sup>9</sup> while a study published by the National Community Reinvestment Coalition in 2006 indicated that "[m]inorities, women, and low- and moderate-income borrowers across the United States of America [continue to] receive a disproportionate amount of high cost loans."<sup>10</sup> In a sample of loans made in 2005, it emerged that women received 37.3% of high-cost conventional loans, but received only 28% of the market-rate conventional loans; men, in contrast, received 66.8% of market-rate loans and 60.2% of high-cost loans.<sup>11</sup>

As the Senate Committee on Banking, Housing and Urban Affairs investigates the role of the U.S. Federal Reserve and other agencies in the rise of defaults and foreclosures,<sup>12</sup> the House Committee on Financial Services has responded to the recent crisis by introducing the Expanding Homeownership Act of 2007, which is intended to

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7. See, e.g., CTR. FOR RESPONSIBLE LENDING, SUBPRIME SPILLOVER: FORECLOSURES COST NEIGHBORS \$202 BILLION; 40.6 MILLION HOMES LOSE \$5,000 ON AVERAGE (Jan. 2008), available at <http://www.responsiblelending.org/pdfs/subprime-spillover.pdf> (describing the impact of foreclosures on home values in the United States); see also John Leland, *Baltimore Finds Subprime Crisis Snags Women*, N.Y. TIMES, Jan. 15, 2008, at A1.

8. Press Release, House Committee on Financial Services, House Democrats Introduce Comprehensive FHA Reform (Mar. 29, 2007), available at [http://www.house.gov/apps/list/press/financialsvcs\\_dem/press033007.shtml](http://www.house.gov/apps/list/press/financialsvcs_dem/press033007.shtml) (quotations omitted) [hereinafter House Committee Press Release].

9. CTR. FOR RESPONSIBLE LENDING, SUBPRIME LENDING: A NET DRAIN ON HOMEOWNERSHIP 3 (Mar. 2007), available at <http://www.responsiblelending.org/pdfs/Net-Drain-in-Home-Ownership.pdf> [hereinafter CRL, SUBPRIME LENDING].

10. NCRC Report, *supra* note 6, at 3.

11. *Id.* at 11.

12. *Mortgage Market Turmoil: Causes and Consequences: Hearing Before the S. Comm. on Banking, Housing & Urban Affairs*, 110th Cong. (2007) (opening statement of Christopher Dodd, Chairman, U.S. Senate Committee on Banking, Housing, and Urban Affairs), available at <http://dodd.senate.gov/index.php?q=node/3795>.

“revitalize the Federal Housing Administration (FHA), a provider of mortgage insurance to low and moderate income families seeking the American dream of homeownership.”<sup>13</sup> The success of such measures remains to be seen. Subprime loans have already led to almost one million American families losing their homes between 1998 and 2006.<sup>14</sup> Statistics on foreclosures in New York in 2007 alone showed an increase of 60% over 2006,<sup>15</sup> and as the ripple effect of the crisis in the U.S. mortgage market will certainly cause waves across the national economy, and indeed the global economy, it is apposite to consider the impact of these developments from a broader perspective.

While the perilous positions of those caught up in the subprime mortgage lending crisis have received much attention in the media in recent months — with considerable concerns particularly for the exposure of low-income households to increased risks of foreclosure — this article explores some of the underlying legal, theoretical, and phenomenological issues associated with default and foreclosure, particularly as they affect women homeowners. This analysis is embedded in feminist discourse on *home*, from a traditional critique of the association between women and home to evolving conceptions of the benefits and the burdens of home in contemporary feminist and feminist legal theory. The idea that debt, default, and bankruptcy are “women’s issues” has recently been advocated by Elizabeth Warren, who has emphasized the rise in women filing alone for bankruptcy.<sup>16</sup> Women filing alone are now the fastest growing category of persons filing for bankruptcy.<sup>17</sup> Yet, the gender dimensions of homeowner debt, default, and the risk of losing one’s home in a foreclosure or bankruptcy present particular challenges for feminist theory, which has historically *rejected* the idea that home is a positive phenomenon for women, or that the relationship between a woman and her home is one that should be protected in law.<sup>18</sup> This article unpacks the

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13. House Committee Press Release, *supra* note 8.

14. CRL, SUBPRIME LENDING, *supra* note 9, at 2.

15. Tom Fredrickson, *NYC Braces for Foreclosure Surge*, CRAIN’S N.Y. BUSINESS.COM, July 27, 2007, <http://www.crainsnewyork.com/apps/pbcs.dll/article?AID=/20070727/FREE/70727001/1048> (last visited Mar. 15, 2008).

16. Elizabeth Warren, *What Is a Women’s Issue? Bankruptcy, Commercial Law, and Other Gender-Neutral Topics*, 25 HARV. WOMEN’S L.J. 19, 28 (2002) [hereinafter Warren, *What Is a Women’s Issue?*].

17. *Id.*; see also Oliver B. Pollak, *Gender and Bankruptcy: An Empirical Analysis of Evolving Trends in Chapter 7 and Chapter 13 Bankruptcy Filings 1967-1997*, 102 COM. L.J. 333, 336 (1997); TERESA SULLIVAN & ELIZABETH WARREN, AM. BANKRUPTCY INST., WOMEN IN BANKRUPTCY (1999), [http://www.abiworld.org/Content/NavigationMenu/NewsRoom/BankruptcyResearchCenter/BankruptcyReportsResearchandTestimony/General/Women\\_in\\_Bankruptcy1.htm](http://www.abiworld.org/Content/NavigationMenu/NewsRoom/BankruptcyResearchCenter/BankruptcyReportsResearchandTestimony/General/Women_in_Bankruptcy1.htm) (last visited Mar. 15, 2008).

18. See discussion *infra* Part III.

meanings of home, and particularly homeownership, for women in the United States today. The recent U.S. mortgage crisis re-emphasizes the risks for homeowners associated with mortgage debt and default: this article traces the idea of "home" and "homeownership" for American women and considers how it might be appropriate to respond to these risks through the lens of feminist legal theory.

## I. THE EMERGING LEGAL CONCEPT OF HOME

It is perhaps somewhat surprising that despite the centrality of home in our lives, and the impact of legal regulation on the occupier's experience of home, the legal concept of home has received surprisingly little attention. As laypersons we know that "there's no place like home," that "home is where the heart is," and we may even believe that the law recognizes that "a man's home is his castle."<sup>19</sup> However, notwithstanding some important recent work on the concept of home in the United States,<sup>20</sup> the development of home scholarship in legal discourse remains in its early stages. This is in marked contrast to the critical attention that the subject of "home" has attracted in other disciplines in recent decades.<sup>21</sup> The blossoming interest in home in the social sciences has stimulated a considerable amount of research, in the form of both empirical studies and theoretical analysis, to explore experiences of home and to analyze the meanings and values that the home represents to its occupiers.<sup>22</sup> Drawing from a vast body of home scholarship across broad social science disciplines, it is possible to identify different types of values associated with home: from home as a financial investment to "home as a physical

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19. The expression "An Englishman's home is his castle" is a misquotation from the decision in *Semayne's Case*, when Coke, C.J. commented "[t]hat the house of every one is to him as his . . . castle and fortress." *Semayne's Case*, (1907) 77 Eng. Rep. 194 (K.B.).

20. See, e.g., Megan J. Ballard, *Legal Protections for Home Dwellers: Caulking the Cracks to Preserve Occupancy*, 56 SYRACUSE L. REV. 277 (2006) (discussing the legal value of a homeowner's non-economic interest viewed through the lens of low-income families living in federally subsidized housing); Barros, *supra* note 1 (discussing the legal concept of home). For recent literature in the United Kingdom, see LORNA FOX, *CONCEPTUALISING HOME: THEORIES, LAWS AND POLICIES* (2007) [hereinafter FOX, *CONCEPTUALISING HOME*]; Lorna Fox, *The Idea of Home in Law*, 2 HOME CULTURES 25 (2005) (discussing why courts are reluctant to give value to non-financial values of home) [hereinafter Fox, *Idea of Home*]; Lorna Fox, *The Meaning of Home: A Chimerical Concept or a Legal Challenge?*, 29 J.L. & SOC'Y 580 (2002) (discussing various meanings of home that have developed from interdisciplinary research) [hereinafter Fox, *Meaning of Home*]. For research in Israel, see Avital Margalit, *The Value of Home Ownership*, 7 THEORETICAL INQUIRIES IN L. 467 (2006) (discussing the homeownership-mortgage relationship in Israel).

21. See discussion *infra* Part III.

22. Fox, *Meaning of Home*, *supra* note 20, at 581.

structure;" from "home as territory" to "home as a centre for self-identity;" and home (especially the owned home) as a cherished socio-cultural indicator.<sup>23</sup> Within home scholarship, these meanings are broadly regarded as positive attributes. For example, in the introduction to their collection *Home Environments*, Irwin Altman and Carol M. Werner wrote that:

Homes offer physical amenities that sustain and support the residents, and they are often essential to the very survival of their occupants. Furthermore, homes are important centers for the development and manifestation of central psychological meanings. Individuals develop identities and regulate privacy in homes; families establish, grow, and bond themselves into a unit in homes and often bond themselves to the larger society through their homes. Thus, homes are the repository of central and essential psychological and cultural processes.<sup>24</sup>

Yet, until relatively recently, this "home" discourse did not penetrate the legal domain. Indeed, it is only in the last five years or so that legal scholarship has begun to turn its attention towards the conceptualization of home in law, with the publication of a range of articles focusing on the meanings and values of home and assessing the legal status of the occupier's interest in property that is occupied as a home across different jurisdictions.<sup>25</sup>

This proliferation of interest in the subject of home clearly intersects with a range of issues for feminist scholarship. In fact, the importance of gendered analysis for the conceptualization of home has been a key aspect of home scholarship in disciplines other than law. For instance, in 1997, the third issue of *Women's Studies International Forum* was dedicated to analysis of *Concepts of Home*,<sup>26</sup> while *Signs: Journal of Women in Culture and Society* produced a special issue on the theme of gender and the meanings of home in 2002.<sup>27</sup> The potential scope for analyses of the relationships between gender and the idea of home is tremendously wide. Some feminist scholarship has focused on the inequalities generated by women's work in the home, including housework, reproductive labor, and home-making.<sup>28</sup> Other

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23. *Id.* at 590 (emphasis omitted).

24. Irwin Altman & Carol M. Werner, *Introduction to HOME ENVIRONMENTS* xix, xix (Irwin Altman & Carol M. Werner eds., 1985).

25. See sources cited *supra* note 20.

26. See *Concepts of Home*, 20 WOMEN'S STUD. INT'L F. 343 (1997).

27. See 27 SIGNS 603, 813-900 (2002).

28. See, e.g., KERREEN M. REIGER, *THE DISENCHANTMENT OF THE HOME: MODERNIZING THE AUSTRALIAN FAMILY 1880-1940* (1985) (discussing efforts made in the late nineteenth and early twentieth century to introduce technology into the household and efforts made



issues explored in feminist legal and criminological analysis have ranged from the examination of the home as a site for domestic violence<sup>29</sup> to the difficulties some people experience with feeling at home as a result of gender inequality or prejudice based on sexual orientation.<sup>30</sup>

Across these intersections between gender and home, the issues that have emerged have been both complex and controversial. This article seeks to contribute to this project through a specific analysis of the experiences of women as homeowners, including the dangers and disappointments associated with the risk of losing one's home through forced sale at the hands of a creditor, in a foreclosure or in the context of bankruptcy. Part II locates this analysis within the creditor/occupier context by outlining the legal frameworks within which creditor actions against the home are addressed, as well as highlighting the gendering of the creditor/occupier dispute and growing evidence that debt and bankruptcy are "women's issues." The analysis of gender issues in the context of creditor possession actions is then developed in Part III by focusing on the impact of the critical feminist analyses and the traditional rejection of home as a positive phenomenon or as a "woman's place" on how we think about the meanings and values of home for women occupiers. These negative responses to home *per se* are often underwritten by the suggestion that while home has some positive features, these positive aspects of home are not equally available to women. For example, while "mainstream" home scholarship has represented the home as a safe territory, sustaining self- and social-identity and sheltering fulfilling relationships with family members and others, feminist scholarship has highlighted the associations of home, for women occupiers in particular, with insecurity, lack of control over financial decision making, dependency, and the danger that women are rendered

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to define the housewife as "modern," as well as changing patterns of reproduction and homemaking).

29. See, e.g., Leslie J. Moran, *The Poetics of Safety: Lesbians, Gay Men and Home*, in *CRIME AND INSECURITY: THE GOVERNANCE OF SAFETY IN EUROPE* 274 (Adam Crawford ed., 2002); Esther Saraga, *Dangerous Places: The Family as a Site of Crime*, in *THE PROBLEM OF CRIME* 183 (John Muncie & Eugene McLaughlin eds., 1996); Elizabeth A. Stanko, *Fear of Crime and the Myth of the Safe Home: A Feminist Critique of Criminology*, in *FEMINIST PERSPECTIVES ON WIFE ABUSE* 75 (Kersti Yllö & Michele Bograd eds., 1988).

30. See, e.g., NICHOLAS K. BLOMLEY, *LAW, SPACE, AND THE GEOGRAPHIES OF POWER* 23-24 (1994) (discussing how aims to improve American women's lives have been structured such that there is a divide between "family" and "market"); Leslie J. Moran, *What's Home Got To Do With It? Kinship, Space, and the Case of Family, Spouse, and Civil Partnership in the UK*, 17 *YALE J.L. & FEMINISM* 267 (2005) (discussing the legal struggles relating to the recognition of same-sex domestic relationships).

invisible by subjugation within the family unit.<sup>31</sup> The argument that women might be able to obtain positive benefits from their relationship with the home has been tainted by historical "assumptions about women's 'natural role' in the private sphere of life, carrying out their 'duties' within the home and the family."<sup>32</sup>

The essentially negative view of the meanings and values of home within some feminist scholarship was, at least until the 1970s, "paralleled by the relative dearth of conceptual and empirical analysis into the meaning and values of home" in any of the social science disciplines.<sup>33</sup> "[B]y the late 1970s[,] home scholarship remained speculative, with little empirically-based, scientific evidence to support the proposition that occupiers [— including women —] could have a special[,] [positive] attachment to [a particular] property because it was their home."<sup>34</sup> Furthermore, the negative portrayal of home in early feminist scholarship, coinciding with the lack of activity in other disciplines, may not have been merely coincidental. Rebecca Peterson has argued that "the neglect of home as a subject of analysis [until the late 1970s] was attributable to the economic and social devaluation of home as a feminine, private space."<sup>35</sup>

Yet, as home scholarship has developed in other disciplines, feminist discourse on the meanings and values of home has also evolved, through the incorporation of women's experiences into theoretical analyses.<sup>36</sup> A new school of feminist literature on the subject of home has sought to re-evaluate the phenomenon of home and has triggered a shift in feminist thought, "from the outright rejection of *home* as an oppressive institution to a more nuanced account which seeks to balance the negative experiences associated with home for women against recognition" of the potentially positive aspects of a relationship with home.<sup>37</sup> A key aspect of this re-analysis for feminist theory is the focus on taking "a real measure of the home experience for women, which reflects the complexities of the desire for

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31. FOX, CONCEPTUALISING HOME, *supra* note 20, at 363.

32. *Id.*; see also Michelle Zimbalist Rosaldo, *Woman, Culture, and Society: A Theoretical Overview*, in WOMAN, CULTURE, AND SOCIETY 17 (Michelle Zimbalist Rosaldo & Louise Lamphere eds., 1974) (exploring the identification of women with child rearing and domestic life).

33. FOX, CONCEPTUALISING HOME, *supra* note 20, at 363.

34. *Id.*; see also D. Geoffrey Hayward, *Psychological Concepts of 'Home,'* HUD CHALLENGE, Feb. 1977, at 10, 10.

35. FOX, CONCEPTUALISING HOME, *supra* note 20, at 363-64; see also Rebecca Peterson, *Introduction to The Domestic Workplace*, in NEW SPACE FOR WOMEN 37, 37 (Gerda R. Wekerle et al. eds., 1980).

36. FOX, CONCEPTUALISING HOME, *supra* note 20, at 364.

37. *Id.*

home (including the desire for home ownership) as well as recognising the dangers and disappointments associated with attachments to home."<sup>38</sup>

The risk of losing one's home through forced sale at the hands of a creditor, in a foreclosure or in the context of bankruptcy, raises important issues concerning the acclamation of homeownership as a universal value for women and men, which are considered in Part IV. Housing policy commentators have argued that *home*, and especially homeownership, is gender neutral: "that is, that women benefit from the positive meanings and values of home — including the benefits of home ownership — as much as men. Furthermore, it has been argued that the advantages of home ownership," and its gender-neutral advantages, "belie the feminist representation of home as an oppressive institution."<sup>39</sup> However, "[t]his perspective has been challenged by empirical studies into the differential experiences of home, including the experience of home ownership, for men and for women."<sup>40</sup> These arguments are considered in Part V. Finally, Part VI considers the question of gender difference in exposure to, and the experience of, losing one's home through creditor actions to take possession and force the sale of an occupied home.

## II. THE CREDITOR/OCCUPIER CONTEXT

Creditor actions against the owner-occupied home are generally triggered by the debtor's default on repayment of a debt, leading the creditor to respond by seeking to release the capital value of the property through foreclosure, and thus forcing the eviction of the occupier and the sale of the property.<sup>41</sup> In many states, mortgage lenders can force the sale of the occupier's home in the event of default through either non-judicial foreclosure, subject to the lender following the procedures set out by the relevant state legislature, or by bringing foreclosure proceedings through the court (judicial foreclosure).<sup>42</sup> Yet, although the procedure for foreclosure varies from state to state, it is important to recognize that, across the board, once the borrower has defaulted the balance of power lies firmly with the lender: in balancing the commercial interests of the creditor against the home interests of the occupier, the law has tended to strike the balance on the side of the creditor.<sup>43</sup>

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38. *Id.*

39. *Id.*; see also PETER SAUNDERS, A NATION OF HOME OWNERS 307-10 (1990).

40. FOX, CONCEPTUALISING HOME, *supra* note 20, at 364.

41. CAROLYN L. CARTER ET AL., REPOSSESSIONS AND FORECLOSURES 511 (5th ed. 2002).

42. *Id.*

43. *Id.* at 512-13.

One option that is open to occupiers seeking to protect their homes is to apply for bankruptcy, with a view to invoking the homestead exemptions, which provide a special protection for the bankrupt's *home* against actions to force the sale of the property by creditors.<sup>44</sup> The protection afforded to the debtor's primary residence under homestead legislation varies, but "46 out of 50 states offer some form of homestead exemption to protect equity in the home from the general reach of creditors."<sup>45</sup> The exemption amount ranges from \$500 in Iowa to \$200,000 in Minnesota, with five states offering a complete exemption.<sup>46</sup> Where a total exemption is offered, the home itself will be preserved because creditors are barred from forcing the sale of the property.<sup>47</sup> Where only a partial exemption is available, however, the creditor may still force a sale if the value of the property is greater than the amount of the exemption.<sup>48</sup> In these cases, if the borrower files for bankruptcy, the bankrupt may receive a share of the equity raised by the sale.<sup>49</sup> Nevertheless, the home itself will still be sold.<sup>50</sup>

The context of creditor actions against properties that are occupied *as a home* provides a useful lens through which to consider the relationship between gender and the meaning of home for several reasons. The links between debtor default, bankruptcy, and forced sale of the owner-occupied home have important ramifications for women as homeowners in a socio-cultural environment that has placed a premium on owner-occupation.<sup>51</sup> Yet, against a socio-political framework that extols the advantages of homeownership (including low-income homeownership) it is important to temper the benefits and opportunities presented by homeownership with the potential costs and the risks that home buyers are exposed to if they default on their debts.

The nature of the competing claims of creditors and occupiers highlights the values at stake when seeking to balance their competing interests in the disputed property. The creditor, on the one hand, is primarily interested in the capital asset represented by the

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44. George M. Prescott Jr., *AMPHISABAENA! How 11 U.S.C. § 522(c) Expands and Contracts State-Law Exemptions in Bankruptcy*, 9 AM. BANKR. INST. L. REV. 435, 437-38 (2001).

45. FOX, *CONCEPTUALISING HOME*, *supra* note 20, at 350. The only states offering no exemption are Delaware, New Jersey, Pennsylvania, and Rhode Island. *Id.* at 350 n.202.

46. *Id.* at 350 n.202. The five states offering total exemption are Florida, Kansas, Oklahoma, South Dakota, and Texas. *Id.*

47. KAREN GROSS, *FAILURE AND FORGIVENESS: REBALANCING THE BANKRUPTCY SYSTEM* 47 (1997).

48. *Id.*

49. *Id.*

50. *Id.*

51. *See supra* text accompanying notes 1-3.

property.<sup>52</sup> Occupiers, on the other hand, have interests which may include the financial value of the property, its function as a shelter, and the complex amalgam of social, psychological, cultural, and emotional values that attachments to home can foster.<sup>53</sup> Between these claims, it is reasonable to surmise that in states where total exemption is available, the importance of the home to occupiers appears to be prioritized over and above the need to ensure that creditors can recoup their debts. On the other hand, in states with weaker homestead exemptions, or none at all, the claims of creditors to recover their debts appear to be prioritized over the interests of occupiers in retaining the property for use and occupation *as a home*.

The values at stake in this contest can also be usefully conceptualized within the parameters of feminist economic scholarship. While the creditor's abstract interest in the capital value of the property can be regarded as a masculine interest, the occupier's material *home* interest has been characterized as a feminine claim.<sup>54</sup> Julie Nelson provides a vivid illustration of the contrast between the interests at stake in her description of the Cartesian model of objectivity.<sup>55</sup> The creditor's commercial interest in the property as a financial asset can be related to "the abstract, general, detached, emotionless, 'masculine' approach taken to represent scientific thinking . . . radically removed from, and clearly viewed as superior to, the concrete, particular, embodied, passionate, 'feminine' reality of material life."<sup>56</sup> Nelson's

observations about the way in which 'masculine' and 'feminine' interests are ordered is clearly reflected in the conflict between the commercial claims of creditors and the home interests of occupiers. While the creditor's claim to the abstract capital asset represented by the property can be characterised as masculine,

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52. FOX, *CONCEPTUALISING HOME*, *supra* note 20, at 101.

53. Jacob Ziegel, *The Challenges of Comparative Consumer Insolvencies*, 23 PENN ST. INT'L L. REV. 639, 658-59 (2005).

54. Kate Green, *Being Here — What a Woman Can Say About Land Law*, in *FEMINIST PERSPECTIVES ON THE FOUNDATIONAL SUBJECTS OF LAW* 87, 89 (Anne Bottomley ed., 1996). Indeed, the lack of attention given to the argument on behalf of the home occupier in legal discourse, until relatively recently, has been attributed, in part, to the subjectivity — and apparent "femininity" — of the occupier's home interest: "Masculine knowing characterises itself as rational, self-interested, hierarchical and, above all, abstracted from His emotional life and physical body, being concerned with the fittest ideas in a competitive market. In His book, feminine (un)knowing is inevitably His converse: intimate, natural, material, emotional." *Id.*

55. Julie A. Nelson, *The Study of Choice or the Study of Provisioning? Gender and the Definition of Economics*, in *BEYOND ECONOMIC MAN: FEMINIST THEORY AND ECONOMICS* 23, 24-25 (Marianne A. Ferber & Julie A. Nelson eds., 1993).

56. *Id.* at 25.

rational, easily quantifiable, 'knowable,' the material concerns associated with using and occupying the property as a home can be construed as a 'feminine' interest.<sup>57</sup>

It is also interesting to note a parallel dichotomy between the commercial interests of creditors, which are rooted in the market values that characterize public sphere transactions, and the domestic and family-related values that tend to dominate *home* discourse and that are clearly classified as matters for the private sphere.<sup>58</sup> This dichotomy is also underpinned by the perceived "gendering" of the competing parties. Thus, while the creditor is concerned with the masculine concern of business profits,<sup>59</sup> the occupier's claim is constructed in legal discourse as a feminine claim<sup>60</sup> and, as a consequence, as a second-order interest which can be pushed to the margins as a lower-order priority.<sup>61</sup> As Kate Green has noted, the gendering of "creditors as masculine" and "occupiers as feminine" has important implications in the context of a legal system which prioritizes the "needs of property owners, self-interested and rational individuals in the market place, [in] overrid[ing] the needs of those who are different: weaker or poorer, or in a different way defined as Other."<sup>62</sup>

The impact of losing one's home on an individual occupier's quality of life, social and identity status, personal and family relationships, and for his or her emotional, psychological, and physical health and well-being have been well-established in housing and health literature.<sup>63</sup> With this in mind, policy debates around homeownership as a means to allow individuals to experience the positive meanings

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57. FOX, CONCEPTUALISING HOME, *supra* note 20, at 101.

58. *Id.* at 362.

59. Rosemary Auchmuty, *The Rhetoric of Equality and the Problem of Heterosexuality*, in FEMINIST PERSPECTIVES ON CONTRACT LAW 51, 71 (Linda Mulcahy & Sally Wheeler eds., 2005).

60. FOX, CONCEPTUALISING HOME, *supra* note 20, at 362; *see also* Green, *supra* note 54, at 93-94.

61. Green, *supra* note 54, at 93-94.

62. *Id.*

63. FOX, CONCEPTUALISING HOME, *supra* note 20, at 365; *see also* ELAINE KEMPSON, LIFE ON A LOW INCOME 113 (1996) (describing the difficulty low-income wage earners face when trying to meet mortgage payment obligations); ELAINE KEMPSON, ALEX BRYSON & KAREN ROWLINGSON, HARD TIMES?: HOW POOR FAMILIES MAKE ENDS MEET 148-62 (1994) (discussing individuals' reluctance to ask for financial assistance from friends or family out of fear that it would indicate they could not cope on their own); Sarah Nettleton, *Losing Homes Through Mortgage Possession: A 'New' Public Health Issue*, 8 CRITICAL PUB. HEALTH 47 (1998) (linking problematic homeownership with poor health); Sarah Nettleton & Roger Burrows, *When a Capital Investment Becomes an Emotional Loss: The Health Consequences of the Experience of Mortgage Possession in England*, 15 HOUSING STUD. 463 (2000) (providing an analysis of the health consequences in the experience of mortgage possession).

of home should also be sensitive to the negative experiences of homeowners who are at risk of exposure to foreclosure or bankruptcy.<sup>64</sup> When considering how the law might wish to respond to any gender differential around mortgage default, foreclosure, or bankruptcy, critics might argue that any targeted legal protection for women homeowners could in fact be counterproductive by increasing the costs to creditors who lend to women, who in turn could respond by passing those costs on to female consumers and so push female borrowers into a new subprime market.<sup>65</sup>

In addition to these operational issues, there are also important issues of feminist strategy to consider. While any evidence of systemic inequality would seem to demand a strategic response, there is a potential danger that any special treatment linked to gender would bear undesirable connotations of women's incapacity in the spheres of property law or contract law.<sup>66</sup> This article seeks to re-examine the law's response to homeownership, debt, and default from a gender perspective and to consider whether, "if there is a case for enhancing the legal protection available to certain categories of home occupiers, this goal can be pursued without undermining . . . the concept of *home* within feminist scholarship."<sup>67</sup>

### III. FEMINIST CRITIQUE OF THE VALUES OF HOME

In the wake of the subprime mortgage lending crisis in the United States, and its consequent impact on the national and global economy, the issues around housing, homeownership, and affordability have assumed center stage.<sup>68</sup> This follows a flourish of scholarly interest in recent years across many social sciences disciplines into the meanings and values of "home."<sup>69</sup> Yet, while the rise in scholarly analysis of the meanings and value of home is relatively recent, the impulse to investigate the relationship between occupiers and the properties in which they reside is rooted in a long-established and instinctive sense that *home* is a positive phenomenon.<sup>70</sup> Philosophers have long regarded the relationship with one's home "as a dwelling place that enables the occupier to become oriented in the world."<sup>71</sup>

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64. FOX, CONCEPTUALISING HOME, *supra* note 20, at 392.

65. *Id.* at 365-66.

66. *Id.*

67. *Id.* at 366.

68. See Vikas Bajaj & Louise Story, *Mortgage Crisis Spreads Beyond Subprime Loans*, N.Y. TIMES, Feb. 12, 2008, at A1.

69. FOX, CONCEPTUALISING HOME, *supra* note 20, at 366.

70. *Id.*

71. *Id.* at 366-67; see also GASTON BACHELARD, THE POETICS OF SPACE 7 (Maria Jolas trans., 1964) (1958) (describing the home as a shelter from the world and as a place of

More recently, social science research has identified a range of meanings and values that can usefully be considered as “the five clusters of contemporary home meanings,”<sup>72</sup> and that are generally predicated on the understanding that “*home* is a source of positive meanings, attachments and experiences for occupiers.”<sup>73</sup> Indeed, it is not only *home per se* that is generally portrayed in a positive light, but policies promoting the expansion of the homeownership sector<sup>74</sup> that have been rooted in the belief that the relationship between an owner-occupier and their home is beneficial — particularly when compared to the relationship between renter and home.<sup>75</sup>

In contrast, feminist critique typically presented “home” as a negative phenomenon, as “the girl’s prison and the woman’s work-house,”<sup>76</sup> as a place where women experienced patriarchy, oppression, and domestic violence.<sup>77</sup> On one level, this approach reflected the broader concerns of feminists about the public/private divide, with “home as the archetype of the private sphere.”<sup>78</sup> A central concern for many feminists was the fear that any suggestion of a positive association between women and their homes might be construed as confinement of women to the home and to the private sphere “where they [we]re invisible to the law, vulnerable to abuse, and without access to public power,”<sup>79</sup> while access to, and participation in, the public sphere (for example, “the market”) was controlled by men.<sup>80</sup>

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safety, security, and warmth); EDWARD S. CASEY, *GETTING BACK INTO PLACE: TOWARD A RENEWED UNDERSTANDING OF THE PLACE-WORLD* (1993) (discussing the territoriality of home); MARTIN HEIDEGGER, *POETRY, LANGUAGE, THOUGHT* 145-161 (Albert Hofstadter trans., 1971) (1971); J. E. MALPAS, *PLACE AND EXPERIENCE: A PHILOSOPHICAL TOPOGRAPHY* (1999) (providing a philosophical perspective on the relationship between home and self-identity).

72. FOX, *CONCEPTUALISING HOME*, *supra* note 20, at 367. The five clusters of contemporary home meanings are “home as financial asset; home as physical structure; home as territory; home as identity; and home as socio-cultural unit.” *Id.* at 367 n.17.

73. *Id.* at 367.

74. See Nicolas P. Retsinas & Eric S. Belsky, *Examining the Unexamined Goal*, in *LOW-INCOME HOMEOWNERSHIP: EXAMINING THE UNEXAMINED GOAL* 1, 1-12 (Nicolas P. Retsinas & Eric S. Belsky eds., 2002) (discussing the promotion of low-income ownership in the United States). For more information, see the following chapters in *LOW-INCOME HOMEOWNERSHIP*: Mark Duda & Eric S. Belsky, *Anatomy of the Low-Income Homeownership Boom in the 1990s*, at 15, 52; Donald R. Haurin, Toby L. Parcel, & R. Jean Haurin, *Impact of Homeownership on Child Outcomes*, at 427, 439; William Rohe, Shannon Van Zandt & George McCarthy, *Social Benefits and Costs of Homeownership*, at 381, 400-01.

75. Rohe et al., *supra* note 74, at 400-01.

76. FOX, *CONCEPTUALISING HOME*, *supra* note 20, at 367 (quoting GEORGE BERNARD SHAW, *MAN AND SUPERMAN* 262 (1903)).

77. *Id.* at 367.

78. *Id.*

79. *Id.*

80. *Id.* Furthermore, because the public sphere is deemed to be inherently more important than the private, male dominance in the public sphere gives men power to



### A. *Home as "Women's Place"*

The role of housing and the built environment in marking off public and private spheres along gendered lines has been a central theme for many feminist scholars. Valerie Burks argued that feminists were compelled to reject home because "[f]rom its very beginnings, feminism has, in large part, sought to expose the separation of public and private life as a mere fabrication of phallo-centric power structures meant to quell woman's political identity and 'keep her at home.'" <sup>81</sup> Patricia Gardiner argued that "the political and ideological construct [of home] was translated into the built form so that public buildings and spaces associated with citizenship and power were male-centered, and the home was considered the women's realm." <sup>82</sup> Indeed, Gardiner described the "cult of domesticity," which "idealised women as the center of home and hearth," as a mechanism by which housing was used to reinforce male dominance over women and women's social and political subordination. <sup>83</sup> The idea of home as "women's place" operated on at least two levels: both in cutting women off from the public sphere and confining their activities to the domestic sphere, and in imposing the demands of domestic life on women, which, through sheer burden, inhibited their freedom and availability to pursue other agendas in the public sphere. <sup>84</sup> This idea of confinement within the home has interesting and potentially paradoxical connotations for the creditor/occupier context: if women are identified with home, on the one hand, but, following from restrictions on their activity in the public sphere, they cannot contract with creditors, and so are disempowered from acquiring the ownership (and control) of their homes, any positive aspects that might result from identification with the home are clearly undermined.

The potentially positive attributes of "home" underpinned Heidegger's philosophy of dwelling, which identified the relationship between an individual and the place in which they dwell as elemental to the human condition. <sup>85</sup> It is interesting to consider, however, critiques of Heidegger's concept of dwelling from some feminist

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prevail over women in the private sphere. Susan B. Boyd, *Introduction* to CHALLENGING THE PUBLIC/PRIVATE DIVIDE: FEMINISM, LAW, AND PUBLIC POLICY 3, 8 (Susan B. Boyd ed., 1997).

81. FOX, CONCEPTUALISING HOME, *supra* note 20, at 367-68 (quotations omitted).

82. *Id.* at 368 (quoting Patricia Gardiner, *Housing and Gender: Beyond the Public/Private Dichotomy*, in SHELTER, WOMEN AND DEVELOPMENT: FIRST AND THIRD WORLD PERSPECTIVES 62, 62 (Hemalata C. Dandekar ed., 1993)).

83. Gardiner, *supra* note 82, at 62.

84. FOX, CONCEPTUALISING HOME, *supra* note 20, at 368.

85. *Id.*

commentators. Some critics have argued that “when Heidegger separated ‘building’ into ‘construction’ and ‘preservation,’ he demonstrated an implicit preference for building,”<sup>86</sup> an implicitly more “masculine” activity. Indeed, in *Building, Dwelling, Thinking*, Heidegger claimed that “[b]uilding in the sense of preserving and nurturing is not making anything.”<sup>87</sup> While masculinity claims the “‘building activities,’ such as the construction of the home, paying for the home and adding value to the home by making improvements,” women are relegated to “preservation.”<sup>88</sup> Put another way, men are focused on the activities that relate to the meanings of home as a financial asset and as a physical structure, while women are associated with the less tangible “x-factor” meanings clustered around home as territory, home as identity, and home as a socio-cultural signifier. The “masculine” categories of meaning are more readily tangible or measurable than some of the other value clusters associated with home and, perhaps not surprising, tended to dominate traditional legal discourse relating to value in the home.<sup>89</sup> The tasks that have been designated as “women’s labor” in the home, on the other hand, tend to be constituted in the repetitive housework tasks required to preserve the home, but without demonstrably *adding* anything to the value of the property, and which have typically been overlooked in traditional legal discourse.<sup>90</sup>

In her analysis of the meaning of home, Iris Young critiqued Heidegger’s “allegedly universal ontology” of dwelling as being “implicitly gendered” because women generally do not build.<sup>91</sup> The idea that women are disadvantaged within the concept of dwelling was rooted in the following reasoning:

If building establishes a world, if building is the means by which a person emerges as a subject who dwells in that world, then not to build is a deprivation. Those excluded from building, who do not think of themselves as builders, perhaps have a more limited relation to the world, which they do not think of themselves as founding.<sup>92</sup>

Young argued that “[t]hose who build dwell in the world in a different way from those who occupy the structures already built, and

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86. *Id.* at 368-69.

87. HEIDEGGER, *supra* note 71, at 147.

88. FOX, *CONCEPTUALISING HOME*, *supra* note 20, at 369.

89. *Id.*

90. *Id.*

91. Iris M. Young, *House and Home: Feminist Variations on a Theme*, in *RESISTANCE, FLIGHT, CREATION: FEMINIST ENACTMENTS OF FRENCH PHILOSOPHY* 49, 50-51 (Dorothea Olkowski ed., 2000).

92. *Id.* at 52.

from those who preserve what is constructed.”<sup>93</sup> This difference led her to conclude that, “[i]f building establishes a world, then it is still very much a man’s world.”<sup>94</sup> In addition to this, Young claimed that the disadvantages for women in relation to dwelling are exacerbated by a gendered division of labor in the relation to shared homes.<sup>95</sup> When women perform a supporting role within the home, they facilitate male dominance, both within the home and in the public sphere.<sup>96</sup> Luce Irigaray suggested that “[m]an can build and dwell in the world of patriarchal culture . . . only on the basis of the materiality and nurturance of woman.”<sup>97</sup>

The suggestion that the benefits of home — whether as a financial asset or in relation to the social, psychological, emotional, and cultural meanings of home — are enjoyed by men, at women’s expense, is one of the core arguments in traditional feminist critique of “home as women’s place.”<sup>98</sup> The demands of work within the home to serve, nurture, and maintain men and children also function to deny women the opportunity to participate in the public sphere.<sup>99</sup> Thus, a positive association between women and home was regarded, not only as a reflection of the confinement of women in the private sphere, but, through the demands of other members of the family on women’s labor within the home, as an inhibitor on the development of female projects outside the home.<sup>100</sup>

### *B. Some Problems of Protecting the “Family Home”*

The relationship between home as women’s place and the demands of family members on the labor and energies of women in the home raises interesting issues in relation to the emphasis on the *family home* in legal discourse. For example, homestead protections are often regarded as being inextricably linked with ideas about family, whether the objective of the exemption is identified as being to “help indebted male providers survive financial misfortune” or “to protect vulnerable women and children from insolvency and homelessness.”<sup>101</sup> Although some States have broadened the scope of the

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93. *Id.*

94. *Id.*

95. *Id.* at 49.

96. *Id.*

97. *Id.* at 50.

98. FOX, CONCEPTUALISING HOME, *supra* note 20, at 369.

99. See Young, *supra* note 91, at 49.

100. *Id.*

101. See Alison D. Morantz, *There’s No Place Like Home: Homestead Exemption and Judicial Constructions of Family in Nineteenth-Century America*, 24 L. & HIST. REV. 245, 250 (2006).

homestead protection beyond defined "family" properties,<sup>102</sup> it is broadly recognized that, "[i]n popular as well as legal parlance, homestead means not only family home but property that is accorded particular protection because it is the family home."<sup>103</sup>

The fusion of "family" and "home" in policy discourse has several significant connotations for feminist analyses of the meaning of home. First, as noted above, the historical objective of homestead exemption, to "protect vulnerable women and children,"<sup>104</sup> was rooted in a presumption of female dependency on a male breadwinner.<sup>105</sup> Yet, although protectionist approaches may sometimes be justified as "redressing the balance" of social and economic inequality,<sup>106</sup> Anne Bottomley has argued that "whilst we must recognize the structural inequalities that women suffer from, any legal strategies developed as an attempt to mitigate this must not reproduce models of dependency."<sup>107</sup> In family property terms, this can be characterized as the choice between recognizing the economic vulnerability of women, and so regarding the husband's property in "more familial terms," and treating women and men within family units as separate individuals, with independent interests and claims to the property.<sup>108</sup>

The tendency to focus on the family unit rather than individual family members also carries a risk of rendering women and children invisible as stakeholders, or even as rights-bearing individuals,<sup>109</sup> and an implicit presumption that individuals within a single family unit will have a unitary collective interest in the home.<sup>110</sup> Considering Young's critique of home against the backdrop of *family* home, the demands associated with women's "caretaking work within the home are clearly rooted in the idea that women within the home are labouring under obligations towards other family members (ie men and children)."<sup>111</sup> It is interesting to consider that, from this perspective,

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102. One notable example is the Texas Constitution that, in an amendment passed in 1973, extended the contexts in which the homestead exemption can apply to include *single adults*: "The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for . . . [the section then sets out permitted encumbrances]." TEX. CONST. art. XVI, § 50.

103. Joseph W. McKnight, *Protection of the Family Home from Seizure by Creditors: The Sources and Evolution of a Legal Principle*, 86 SW. HIST. Q. 369, 369 (1983).

104. Morantz, *supra* note 101, at 250.

105. FOX, CONCEPTUALISING HOME, *supra* note 20, at 361.

106. Katherine O'Donovan, *Protection and Paternalism*, in THE STATE, THE LAW AND THE FAMILY: CRITICAL PERSPECTIVES 79, 86 (Michael D.A. Freeman ed., 1984).

107. Anne Bottomley, *Women, Family and Property: British Songs of Innocence and Experience*, in FAMILIES, POLITICS AND THE LAW: PERSPECTIVES FOR EAST AND WEST EUROPE 261, 261 (Mavis Maclean & Jacek Kurczewski eds., 1994).

108. *Id.* at 264.

109. See FOX, CONCEPTUALISING HOME, *supra* note 20, at 335-36.

110. *Id.*

111. *Id.* at 370.

the true target for feminist critique of *home* is not in fact the idea of a connection between women and their homes, but instead is rooted in a concern around the relational demands that the woman's role within the family unit has traditionally imposed.<sup>112</sup> While *home* may properly be identified as the site at which these demands are expressed, the mischief of the problem is with the woman's role within the *family*, rather than her attachment to her *home*.<sup>113</sup>

The family unit analysis also posits some practical difficulties in relation to the definition of a homestead unit. The focus on *family* home for the purposes of homestead protections in several states is usually accompanied by a state definition of "family" for the purposes of home.<sup>114</sup> In many cases, these definitions are restricted to spouses, or at least to relationships that appear to mimic marriage.<sup>115</sup> However, one notable exception to this general tendency is the Texas homestead exemption, one of the most generous homestead protections in the United States since its inception in 1839.<sup>116</sup> The interpretative commentary accompanying the Texas Constitution stated that the principal object of the scheme was the "protection of the family."<sup>117</sup> Nevertheless, judicial *dicta* concerning the application of the Texas homestead exemption suggested that, although the protection was originally available only to marital families, even in its early years the concept of homestead was not inextricably bound up with the concept of family.<sup>118</sup> This was established in *Wood v. Wheeler*, when Chief Justice Hemphill stated that:

The object of such exemption is to confer on the beneficiary a home as an asylum, a refuge which cannot be invaded nor its tranquility or serenity disturbed, and in which may be nurtured and cherished those feelings of individual independence which lie at the foundation and are essential to the permanency of our institutions.<sup>119</sup>

The court clearly framed the protection in terms of the individual's attachment to the property rather than the presence of family or relationships between the occupiers of the property.<sup>120</sup> In *Franklin*

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112. Young, *supra* note 91, at 49.

113. *Id.*

114. Morantz, *supra* note 101, at 247.

115. *Id.* at 246-49.

116. James L. Baker, Comment, *The Texas Homestead Exemption's Near Ban on Home Equity Lending: It's Time for the People to Decide*, 33 HOUS. L. REV. 239, 240 (1996).

117. *Id.* at 254 n.94.

118. See *Wood v. Wheeler*, 1851 WL 4031, at \*8 (Tex. 1851).

119. *Id.*

120. *Id.*

*v. Coffee*,<sup>121</sup> the purposes of the scheme were described as “not only to protect citizens and their families, from the miseries and dangers of destitution, but also to cherish and support in the bosoms of individuals, those feelings of sublime independence which are so essential to the maintenance of free institutions.”<sup>122</sup> Considerable emphasis was placed on the security and independence of individuals within the family unit and the importance of protecting their home environments.<sup>123</sup>

In the century and a half since these dicta, the scope of the Texas homestead protection has been significantly extended, both judicially and by constitutional amendment. First, the courts gradually broadened the definition of family to include relationships of care and dependency,<sup>124</sup> while the underlying individualist orientation of the Texas provisions ultimately emerged in an amendment to the Texas Constitution in 1973 that extended the contexts in which the homestead exemption can apply to include single adults.<sup>125</sup> The Texas homestead provision now comprehensively and systematically protects the homes of both individuals and family units, with the family unit identified according to relationships of care and dependence rather than status.<sup>126</sup> Furthermore, even where the protection is by reference to the “family” home, the central organizing concept is the value of home per se to the individual. In order to establish “membership” of the family, an individual occupier does not need to show economic support as evidence of a relationship of care and dependence, but use and occupation of the property as a home.<sup>127</sup>

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121. *Franklin v. Coffee*, 1857 WL 4980 (Tex. 1857).

122. *Id.* at \*3.

123. *Id.*

124. *NCNB Tex. Nat'l Bank v. Carpenter*, 849 S.W.2d 875, 879 (Tex. App. 1993). The head of the family must be legally or morally obligated to support at least one other member of the family and there must be a corresponding dependence by the other family member for this support. *Id.* Relationships accepted as showing “family” have included a widower with no dependent children, *Border v. McDaniel*, 70 F.3d 841, 844 (5th Cir. 1995); divorced parent and minor child, *Renaldo v. Bank of San Antonio*, 630 S.W.2d 638, 639 (Tex. 1982); and brother and sister, *Real Estate Land Title & Trust Co. v. Street*, 85 S.W.2d 341, 342 (Tex. App. 1935).

125. *Baker*, *supra* note 116, at 257. Section 50 of Article XVI of the Texas Constitution states that: “The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for . . . [the section then sets out permitted encumbrances].” TEX. CONST. art. XVI, § 50. Section 51 of the Texas Constitution now permits that a “homestead claimant” may be “a single adult person, or the head of a family.” TEX. CONST. art. XVI, § 51.

126. See Mark T. Curry, An Overview of the Texas Homestead Law (1999), [http://library.lp.findlaw.com/1999/Oct/1/126857.html#N\\_21](http://library.lp.findlaw.com/1999/Oct/1/126857.html#N_21) (last visited Mar. 15, 2008).

127. *In re Mitchell*, 132 B.R. 553, 568 (Bankr. W.D. Tex. 1991).

*C. Home as a Site for Individual Subjectivity*

A major obstacle for feminist scholarship when it comes to engaging with home as a positive phenomenon has been the idea that home represents a "fixed identity that historically imprisons women."<sup>128</sup> If it were possible to displace the patriarchal ideology of home, this article would argue that there is some scope for the development of a more positive conception of home, which could be embraced within the intellectual domain of feminist scholarship. Furthermore, I would argue that the starting point for such a re-conceptualization of home in feminist thought should reflect the pattern that has emerged in other disciplines: home-analysis begins from instinctive responses to the phenomenon of home as something valuable for the human experience.<sup>129</sup> Young tapped into the humanity of instinctive responses to home when she advocated a re-engagement with the phenomenon of home as a feminist project, on the grounds that, "[d]espite the oppressions and privileges the idea historically carries, the idea of home also carries critical liberating potential because it expresses uniquely human values."<sup>130</sup>

One of the challenges in re-conceptualizing home for feminist scholarship is the need to transcend the idealism surrounding home, on the one hand, and the traditional denunciation of home as a pillar of the private sphere, with all the connotations that this designation implies, on the other, so as to enable a real measure to be taken of the costs and benefits of home attachments and associations for women occupiers.<sup>131</sup> As Bonnie Honig suggested, "[t]he solution lies neither in the consolidation of new and improved homes that claim really to deliver on the dream, nor in the exile of self-alienation[,] . . . [but in] the true measure of the real but relative freedoms we have."<sup>132</sup> This outlook is also reflected in Young's argument that "[d]espite the real dangers of romanticizing home, there are also dangers in turning our backs on home."<sup>133</sup> She acknowledged, however, that "[i]f house and home mean the confinement of women for the sake of nourishing male projects, then feminists have good reason to reject home as a

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128. Young, *supra* note 91, at 56.

129. For example, Radin's discussion of "property and personhood" was clearly rooted in an instinctive response to the significance of certain types of property, including a person's home. See Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 1013 (1982).

130. Young, *supra* note 91, at 49.

131. Bonnie Honig, *Difference, Dilemmas, and the Politics of Home*, 61 SOC. RES. 563, 588 (1994).

132. *Id.* (quotations omitted).

133. Young, *supra* note 91, at 75.

value.”<sup>134</sup> These negative associations must be balanced against the potential benefits associated with attachments to home for women.

The meanings associated with home and homeownership include both the readily identifiable, measurable, and easily recognizable ideas of financial investment in the property and the physical structure of the home, as well as the social, psychological, emotional, and cultural meanings associated with *home*, which are intangible and immeasurable, and so have tended to be more problematic for lawyers.<sup>135</sup> It is these intangible and immeasurable elements of the home attachment that often emerge in instinctive responses to the phenomenon of home.<sup>136</sup> Young’s analysis appeared to implicitly recognize the instinctive nature of positive responses to home when she wrote that “it is difficult even for feminists to exorcise a positive valence to the idea of home[,] . . . [as] [w]e often look forward to going home and invite others to make themselves at home.”<sup>137</sup> In fact, Young’s claim that “home as the materialisation of identity does not fix identity, but anchors it in physical being that makes a continuity between past and present[;] [w]ithout such anchoring of ourselves in things, we are, literally, lost,”<sup>138</sup> reflects the psychological and emotional importance of the home as an anchor for one’s identity and as a valued territory. Even though the labor needed to nurture these aspects of home for the family tended to fall disproportionately on women, Young was able to re-cast the labor associated with home for women by distinguishing between the positive activity of *homemaking* and the drudgery of *housework*.<sup>139</sup> The activity of “[p]reserving the meaningful identity of a household or family by means of the loving care of its mementos is simply a different order of activity from washing the unhealthy bacteria out of the bathroom.”<sup>140</sup> *Homemaking* activities were re-imagined as important opportunities for individuals, families, groups, and peoples to establish and preserve their individual and collective subjectivity.<sup>141</sup>

The key to re-claiming *home* as a positive phenomenon within feminist scholarship appeared to lie in re-configuring the relationship between the benefits of home and the demands imposed on women in order to realize these benefits.<sup>142</sup> It was argued that “[t]o the extent

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134. *Id.* at 49.

135. See generally Fox, *Idea of Home*, *supra* note 20.

136. Young, *supra* note 91, at 49.

137. *Id.*

138. *Id.* at 63.

139. *Id.* at 65.

140. *Id.*

141. *Id.*

142. *Id.* at 65-67.



that it falls to women to perform this [homemaking] work for men and children, just as they perform the work of cooking and washing for them, without men's reciprocation, then women continue to serve as material for the subjectivities of men without receiving like support for themselves."<sup>143</sup> However, this article suggests that these difficulties can be overcome by developing a model of *home* that, following Radin's "property and personhood" theory,<sup>144</sup> is premised on the occupier's individual relationship with the home, rather than relationships between the constituent members of a household.<sup>145</sup> By focusing on *home per se*, rather than *family home*, it is possible to focus on the individual's attachment to the property, rather than on the relative connections that exist between individuals who live together in a shared home.<sup>146</sup> When multiple occupiers live together in a shared home, their respective interests could, of course, be counted together in the balance against a creditor's commercial claim, but the fundamental building block for analysis would be the individual occupier rather than the family unit.<sup>147</sup> One of the questions posed by Young in relation to the re-possession of *home* for feminist thought was whether it would be "possible to retain an idea of home as supporting the individual subjectivity of the person, where the subject is understood as fluid, partial, shifting, and in relations of reciprocal support with others."<sup>148</sup> By re-conceiving *home* in terms of the experiences, needs, and attachments of individual occupiers, rather than the traditional vision of *home as family home*, this article argues that it is possible to make progress toward the feminist goal of *home as a site for individual subjectivity*.

#### *D. Home as a Universal Value?*

The importance of the activity of homemaking was also emphasized in bell hooks's analysis of *home* as a site of dignity and resistance for black women, a place where they created and sustained the environments that enabled them to develop their resistance to oppression in the world at large.<sup>149</sup> hooks claimed that "[b]lack women

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143. *Id.* at 67.

144. Radin, *supra* note 129, at 957.

145. See Lorna Fox, *Creditors and the Concept of 'Family Home': A Functional Analysis*, 25 LEGAL STUD. 201, 227 (2005) [hereinafter Fox, *Creditors*].

146. See *id.* at 212.

147. *Id.*

148. Young, *supra* note 91, at 56. For a discussion of the tensions between autonomy and social context for feminism, see Jennifer Nedelsky, *Reconceiving Autonomy: Sources, Thoughts and Possibilities*, 1 YALE J.L. & FEMINISM 7 (1989).

149. BELL HOOKS, *YEARNING: RACE, GENDER, AND CULTURAL POLITICS* 42 (1990).

resisted by making homes where all black people could strive to be subjects, not objects, where we could be affirmed in our minds and hearts despite poverty, hardship, and deprivation, where we could restore to ourselves the dignity denied us on the outside in the public world.”<sup>150</sup> It is important to note that, distinguished from the drudgery of housework, this home-making labor was regarded as “not simply a matter of black women providing service.”<sup>151</sup> Rather, the activity of making a home provided “the opportunity to grow and develop, to nurture our spirits.”<sup>152</sup> bell hooks’s portrait of *home* for black women was of a place where those who were excluded or disadvantaged could recuperate from their struggles in the world at large and prepare to re-engage with the public sphere.<sup>153</sup>

hooks’s idea of *home as a site of resistance* depicted the home as a restorative place, where people who experienced oppression and disadvantage in the outside world could enjoy dignity, satisfaction, safety, privacy, and an opportunity to develop their identities.<sup>154</sup> In fact, it was the very idea that home has the *potential* to offer these benefits that underpinned traditional feminist rejection of home as a value.<sup>155</sup> While feminist scholarship has always recognized that home was *capable* of providing these benefits, the advantages of home were viewed as relatively unavailable to women.<sup>156</sup> The phenomenon of home was rejected in critical feminist scholarship because home was regarded as a site of male-biased privilege, with the benefits of home accruing to men at the expense of women.<sup>157</sup> Yet, these issues, including the idea of privilege in the availability of home meanings, could potentially be reconciled if the benefits of home were equally available as a universal value, enabling feminist theory to re-possess the concept of home. While Young acknowledged that “[h]aving the stability and comfort of concrete home is certainly a privilege,”<sup>158</sup> she argued that a more appropriate response was not to reject *home* outright, but rather to “extend its positive values to everyone.”<sup>159</sup>

The idea of home as a site of dignity and resistance for people who are economically or socially disadvantaged outside of the home has also been linked, through political discourse, with the expansion

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150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. Young, *supra* note 91, at 72-73.

156. *Id.*

157. *Id.* at 49.

158. *Id.* at 72.

159. *Id.* at 71.

of homeownership.<sup>160</sup> The additional social and economic benefits that, according to political rhetoric, are associated with owning one's own home, especially for low-income households, have been extensively analyzed in recent years.<sup>161</sup> Studies of home meanings have suggested that the significance of a person's home as a "repository of central and essential psychological and cultural processes"<sup>162</sup> is compounded by the additional cultural value attached to homes by owner occupiers.<sup>163</sup> Culturally, homeownership has been perceived as conferring greater freedom and independence, and owner occupation has been linked with a greater sense of control within the home territory and increased ontological security.<sup>164</sup> The status conferred by homeownership has been linked to an occupier's self-identity.<sup>165</sup> Even when considering the meaning of the home as a physical structure, which may ostensibly appear to be neutral across tenures, it has been suggested that the value that the occupier puts on the physical structure of the house is enhanced by ownership.<sup>166</sup> If, as the policy rhetoric suggests, the benefits of *home* are enhanced by homeownership, the growth of homeownership, and particularly the expansion of low-income homeownership, would appear to suggest that the privilege of home is capable of becoming a universal value. The promotion of homeownership could, from this perspective, be regarded as instrumental in the re-possession of the concept of home for critical scholarship.

Yet, as noted in the previous section, one of the overriding issues to bear in mind when re-constructing home for feminist scholarship is the importance of taking a real measure of the meanings and experiences of home, rather than pursuing an idealized vision of home.<sup>167</sup>

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160. See sources cited *supra* note 74.

161. *Id.*

162. Altman & Werner, *supra* note 24, at xix.

163. Janet M. Fitchen, *When Toxic Chemicals Pollute Residential Environments: The Cultural Meanings of Home and Homeownership*, 48 HUM. ORG. 313, 318 (1989).

164. See SAUNDERS, *supra* note 39, at 290-91; Marjorie Bulos & Waheed Chaker, *Sustaining a Sense of Home and Personal Identity*, in THE HOME: WORDS, INTERPRETATIONS, MEANINGS, AND ENVIRONMENTS 227, 234 (David N. Benjamin ed., 1995); Sandy G. Smith, *The Essential Qualities of a Home*, 14 J. ENVTL. PSYCHOL. 31, 44 (1994).

165. Fitchen, *supra* note 163, at 320.

Owning one's own home grants membership in a respected category of people in part because it demonstrates one's commitment to the work ethic. The owned home, the largest single expenditure most people ever make, requires many years of earning and saving, and represents a long-term commitment to the work ethic.

*Id.*

166. See Craig M. Gurney, *Lowering the Drawbridge: A Case Study of Analogy and Metaphor in the Social Construction of Home-ownership*, 36 URB. STUD. 1705, 1706 (1999).

167. Honig, *supra* note 131, at 588.

To this end, it is significant to recognize that, alongside the benefits of widespread homeownership, a series of costs, both social and economic, have also been identified.<sup>168</sup> The increase in risk and the potential costs associated with homeownership are brought into particularly stark relief by the rise in *unsustainable* homeownership, particularly among low-income households, as highlighted by the current crisis in the subprime mortgage market.<sup>169</sup> It is important to bear in mind, when considering the proposition that *home* can be embraced as a universal value, the way in which households that have taken out subprime mortgages — predominantly minorities, women, and low- and middle-income borrowers —<sup>170</sup> have been exposed to rising interest rates and the risks of default and foreclosure. On the one hand, research has suggested that the meanings and values of *home* may be particularly salient for certain categories of owner-occupiers, perhaps as a result of income levels,<sup>171</sup> for children,<sup>172</sup> for the elderly,<sup>173</sup> for those who are physically or mentally disabled,<sup>174</sup>

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168. See Rohe et al., *supra* note 74, at 400-401.

169. ELLEN SCHLOEMER ET AL., CTR. FOR RESPONSIBLE LENDING, LOSING GROUND: FORECLOSURES IN THE SUBPRIME MARKET AND THEIR COST TO HOMEOWNERS 22-23 (Dec. 2006), available at <http://www.responsiblelending.org/pdfs/foreclosure-paper-report-2-17.pdf>.

170. NCRC Report, *supra* note 6, at 3.

171. See Lee Rainwater, *Fear and the House-As-Haven in the Lower Class*, 32 J. AM. INST. PLANNERS 23 (1966) (examining how individuals at various income levels view home).

172. See Louise Chawla, *Childhood Place Attachments*, in PLACE ATTACHMENT 63, 65 (Irwin Altman & Setha M. Low eds., 1992); Louise Chawla, *Home is Where You Start From: Childhood Memory in Adult Interpretations of Home*, in THE MEANING AND USE OF HOUSING: INTERNATIONAL PERSPECTIVES, APPROACHES AND THEIR APPLICATIONS 479, 479 (Ernesto G. Arias ed., 1993); Pia Christensen & Margaret O'Brien, *Children in the City: Introducing New Perspectives*, in CHILDREN IN THE CITY: HOME, NEIGHBOURHOOD AND COMMUNITY (Pia Christensen & Margaret O'Brien eds., 2003); Ross D. Parke, *Children's Home Environments: Social and Cognitive Effects*, in CHILDREN AND THE ENVIRONMENT 33, 35 (Irwin Altman & Joachim F. Wohlwill eds., 1978).

173. See, e.g., Pia C. Kontos, *Resisting Institutionalization: Constructing Old Age and Negotiating Home*, 12 J. AGING STUD. 167, 167-68 (1998); Juliana Mansvelt, *Working at Leisure: Critical Geographies of Ageing*, 29 AREA 289, 295 (1997); Graham Mowl, Rachel Pain & Carol Talbot, *The Ageing Body and Homespace*, 32 AREA 189, 195 (2000).

174. The issues associated with access to, and support of, homeownership for people with disabilities have attracted considerable critical attention. See JAY KLEIN & MERRILL BLACK, NAT'L HOME OF YOUR OWN ALLIANCE, EXTENDING THE AMERICAN DREAM: SUMMARY OF FINANCIAL DATA FOR 16 PARTICIPANTS IN NEW HAMPSHIRE'S HOME OF YOUR OWN PROJECT 1 (1995) (For citation purposes, the introduction is considered page one); Suellen Galbraith, *A Home of One's Own: The Role of Housing and Social Services Agencies*, in THE FORGOTTEN GENERATION: THE STATUS AND CHALLENGES OF ADULTS WITH MILD COGNITIVE LIMITATIONS 141, 141 (Alexander J. Tymchuck et al. eds., 2001); Elizabeth Soper Hepp & Colin Soper, *One Family's Story of Homeownership*, 15 J. VOCATIONAL REHABILITATION 79, 79-80 (2000); Jay Klein, *The History and Development of a National Homeownership Initiative*, 15 J. OF VOCATIONAL REHABILITATION 59, 59-60 (2000); Jay Klein & Debra Nelson, *Homeownership for People with Disabilities: The State of the States in 1999*, 15 J. VOCATIONAL REHABILITATION 67, 67 (2000); Jay Klein, Barbara Boyd Wilson & Debra

and for minorities.<sup>175</sup> Empirical studies have also suggested that when "a person's economic and social resources are limited . . . the home and neighborhood environment play a critical role in that person's life chances and identity."<sup>176</sup>

If, as political rhetoric has suggested, *ownership* of one's home inherently enhances the occupier's ability to experience the positive values of home,<sup>177</sup> then the growth of homeownership would be significant in rendering home a more universal value. Furthermore, because the pursuit of homeownership has been, at least formally, gender neutral, the expansion of the sector might be viewed as a form of "emancipation through capitalism" for women homeowners.<sup>178</sup> For the successful homeowner, a range of additional benefits, such as freedom, continuity, and security, are associated with the security of tenure which is thought to flow from owner-occupation. For the occupier who is threatened with the loss of her home through foreclosure or bankruptcy, however, the converse applies, and it is low-income households, and others who are forced to rely on subprime lending, who experience the greatest risk of possession actions.<sup>179</sup> It is ironic indeed that those for whom *home* is most salient are also

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Nelson, *Postcards on the Refrigerator: Changing the Power Dynamic in Housing and Assistance*, in PART OF THE COMMUNITY: STRATEGIES FOR INCLUDING EVERYONE 177, 179 (Jan Nisbet & David Hagner eds., 2000); John O'Brien, *Down Stairs that Are Never Your Own: Supporting People with Developmental Disabilities in Their Own Homes*, 32 MENTAL RETARDATION 1, 2 (1994).

175. The positive relationship between home, gender, and race was explored by bell hooks. HOOKS, *supra* note 149, at 42.

176. Susan Saegert, *The Role of Housing in the Experience of Dwelling*, in HOME ENVIRONMENTS, *supra* note 24, at 287, 289-90; see also ALVIN L. SCHORR, SLUMS AND SOCIAL INSECURITY 2-3 (1964).

177. See *supra* notes 160-166 and accompanying text.

178. See *supra* text accompanying note 160.

179. See, e.g., PETER MCCARTHY & BOB SIMPSON, ISSUES IN POST-DIVORCE HOUSING: FAMILY POLICY OR HOUSING POLICY? (1991) (explaining how low-income is an obvious issue in relation to vulnerability to repossession, while the high proportion of low-income households in the owner occupied sector emphasizes the extent of the potential for default); WENDY WEBSTER, IMAGINING HOME: GENDER, 'RACE' AND NATIONAL IDENTITY, 1945-64, at 173-82 (1998) (exploring how race also appears to have implications on the availability and sustainability of owner occupation); Danny L. Balfour & Janet L. Smith, *Transforming Lease-Purchase Housing Programs for Low Income Families: Towards Empowerment and Engagement*, 18 J. URB. AFF. 173 (1996) (suggesting that for low-income homeowners the social and economic value of ownership was mitigated by the fact that ownership increases financial and psychological stress among families living on the economic margin); Ann Dupuis & David C. Thorns, *Home, Home Ownership and the Search for Ontological Security*, 46 SOC. REV. 24 (1998) (discussing how elderly people may be rendered particularly vulnerable as occupiers for various reasons, including health problems and financial circumstances, at a time when "home" can play a critical role in maintaining their sense of personal identity and independence); Sarah Nettleton, *Losing a Home Through Mortgage Repossession: The Views of Children*, 15 CHILD. & SOC'Y 82 (2001) (considering the experiences of children in the context of repossession actions).

most vulnerable to the risk of losing their homes through default and foreclosure.<sup>180</sup>

In her discussion of *home* as privilege, Young suggested that the privilege of home has become less of a *gender* privilege, and is now more likely to be linked to privileges of class and race.<sup>181</sup> This is substantiated by evidence that, as the homeownership sector has expanded to include low-income households, these occupiers are disproportionately exposed to the risk of losing their homes through default and foreclosure.<sup>182</sup> Furthermore, it has been argued that the financial and psychological stresses experienced by low-income home buyers, not only by the final eventuality of losing their home in a foreclosure, but by the increased levels of risk that are clearly prevalent in the current mortgage market, may outweigh any social and economic value to be gained from having entered the homeowner sector.<sup>183</sup>

The analytical neglect of *home* interests in legal discourse, as well as the fact that, unless there is a total homestead exemption, the commercial claims of creditors tend to prevail in possession actions, conforms to a classic market economy model of real property law as a discipline that favors "self-interested and rational individuals in the market place, overrid[ing] the needs of those who are different: weaker or poorer, or in a different way defined as Other."<sup>184</sup> One of the key issues to emerge from feminist theoretical analysis of *home* is the importance of considering the availability of *home*, through homeownership, on gender or other grounds.<sup>185</sup> This was reflected in Young's suggestion that, "[a]lthough values of home do indeed signal privilege today, analysis of those values and commitment to their democratic enactment for all can have enormous critical political potential in today's world."<sup>186</sup> The universality of homeownership is considered in Part IV below. Part V develops this analysis by focusing on empirical research on gender difference in the meaning, experience, and value of home. This is followed, in Part VI, by an analysis of potential issues of gender difference with respect to the costs of

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180. See sources cited *supra* note 179.

181. Young, *supra* note 91, at 68-69.

182. A range of factors render low-income households more vulnerable to default. These include higher risk and less certain returns on housing investment; links between housing and labor markets, which increase the likelihood that local job losses will be coupled with house price declines; the likelihood that low-income households have lower cash reserves to help with unforeseen expenses; and the increased risk that follows from better access to credit. FOX, CONCEPTUALISING HOME, *supra* note 20, at 219.

183. Balfour & Smith, *supra*, note 179.

184. Green, *supra* note 54, at 93-94.

185. Fox, *Creditors*, *supra* note 145, at 226.

186. Young, *supra* note 91, at 50.

homeownership in relation to foreclosure and the risk of losing one's home. These analyses are useful in considering whether (and if so, how) the developing legal concept of home should take account of any gender differences that may exist in the experiences of occupiers.

#### IV. THE UNIVERSAL VALUE OF HOMEOWNERSHIP

Although the meaning of home to an individual occupier is necessarily subjective, a number of qualities have repeatedly and consistently emerged from empirical research into occupiers' responses to home.<sup>187</sup> Home represents a complex and multi-dimensional amalgam of financial, practical, social, psychological, cultural, politico-economic, and emotional interests to its occupiers.<sup>188</sup> These values can be grouped into five main clusters of value type: *home as financial investment*, as the primary wealth-accumulating asset that most people will ever own; *home as physical structure* offering material shelter; *home as a territory* offering security and control, a locus in space, permanence and continuity, and privacy; *home as a center for self-identity* offering a reflection of one's ideas and values, and acting as an indicator of personal status; and *home as a social and cultural unit* acting as the locus for relationships with family and friends, and as a center of activities.<sup>189</sup>

One of the interesting patterns to have emerged from empirical studies into the meanings of home is the prevalence of *family* in occupiers' home values.<sup>190</sup> Sophie Watson has noted that "[t]he home as a social concept is strongly linked with a notion of family — the parental home, the marital home, the ancestral home."<sup>191</sup> Empirical studies into home meanings have indicated an affective association between home and family, as the significance of family has emerged across the range of values that are shown in qualitative studies on the meanings of home.<sup>192</sup> Inferences extrapolated from occupiers'

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187. See MIHALY CSIKSZENTMIHALYI & EUGENE ROCHBERG-HALTON, *THE MEANING OF THINGS: DOMESTIC SYMBOLS AND THE SELF* 129 (1981); Carole Després, *The Meaning of Home: Literature Review and Directions for Future Research and Theoretical Development*, 8 J. ARCHITECTURAL & PLAN. RES. 96, 97-99 (1991); Robert M. Rakoff, *Ideology in Everyday Life: The Meaning of the House*, 7 POL. & SOC'Y 85, 85-86 (1977); Rachel Sebba & Arza Churchman, *The Uniqueness of the Home*, 3 ARCHITECTURE & BEHAV. 7, 9-12 (1986); Judith Sixsmith, *The Meaning of Home: An Exploratory Study of Environmental Experience*, 6 J. OF ENVTL. PSYCH. 281, 281-82 (1986).

188. See sources cited *supra* note 187.

189. FOX, *CONCEPTUALISING HOME*, *supra* note 20, at 142-177.

190. Fox, *Creditors*, *supra* note 145, at 202.

191. SOPHIE WATSON & HELEN AUSTERBERRY, *HOUSING AND HOMELESSNESS: A FEMINIST PERSPECTIVE* 8 (1986).

192. See Fitchen, *supra* note 163, at 315; Rakoff, *supra* note 187, at 85-86.

responses have included the propositions that "it is the presence of children and the activity of family life that makes a house into a home,"<sup>193</sup> and that the family home is "a projection and basis of identity, not only of an individual but also of the family."<sup>194</sup> The importance of home as a "place of security and protection" emerges as an even more significant factor in the meaning of a home to its occupiers when the home is a family home, occupied by children,<sup>195</sup> as "[e]ven when children are not explicitly the focus, the family unit is apparent."<sup>196</sup>

The family dimension in the concept of home raises important issues in relation to access to housing, particularly the significance of traditional family forms in women's living arrangements.<sup>197</sup> Typical housing arrangements for women include women living alone, women living with children, women living with men, and women living with other women, and the types of households in which women live appear to have implications for the affordability of home ownership, particularly for single women and female-headed households.<sup>198</sup> Socio-demographic data has indicated that the number of single-person and single-parent households is rising, and that "[t]he majority of both these types of households are headed by women."<sup>199</sup> However, with single rather than double incomes, lower proportions of women in full-time employment compared to men, and a persistent pay differential, it has been argued that "home ownership is most affordable for couples or sharers, then single men, and finally single women, with perhaps one in thirteen of them being able to afford to buy in their own right."<sup>200</sup> The significance of these issues for female-headed households in the United States has been noted in the context of

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193. Rakoff, *supra* note 187, at 93.

194. Juhani Pallasmaa, *Identity, Intimacy and Domicile — Notes on the Phenomenology of Home*, in *THE HOME: WORDS, INTERPRETATIONS, MEANINGS, AND ENVIRONMENTS* 131, 137 (David N. Benjamin ed., 1995).

195. Fitchen, *supra* note 163, at 316.

An image of the home as a refuge from the dangers of the outside world has deep historical roots in [American] society, perhaps captured in the mythical pioneer image of the rough cabin on the prairie, in which the husband-father is pictured protecting his family and its new home from the dangers of wilderness life. Though the nature of the perceived dangers has changed over time, the home is still thought of as the haven, where people, and especially children, are safe.

*Id.*

196. *Id.*

197. Jane Darke, *Househunting*, in *CHANGING PLACES: WOMEN'S LIVES IN THE CITY* 48, 48 (Chris Booth, Jane Darke & Susan Yeandle eds., 1996) [hereinafter Darke, *Househunting*].

198. *Id.* at 51.

199. *Id.* at 49.

200. *Id.* at 51.



bankruptcy, for example. Warren has argued that "women, particularly divorced and separated women with children, are facing a rapidly growing risk of economic collapse. The data from the bankruptcy courts document a shocking decline in the financial health of a growing group of women."<sup>201</sup>

Furthermore, it would be wrong to assume that this trend is primarily manifest among lower-income households and, therefore, among renters. The relationship between the rise of women in bankruptcy and the risk of losing an owner-occupied home is brought into sharp relief by the fact that about half of all women filing for bankruptcy were homeowners.<sup>202</sup> The problem of repossession for female homeowners through bankruptcy is clearly very real. For those states which have low, or no, homestead protections, bankruptcy is likely to lead to repossession and the forced sale of their home.<sup>203</sup>

As Warren's comments have recognized, the rise in female bankruptcy can be viewed as indicative of a more general decline in the economic well-being of a growing group of women.<sup>204</sup> It is also important to remember that bankruptcy is a last resort: even if financial problems do not result in bankruptcy, homeowners who default on debt payments secured against their homes can be exposed to the risk of repossession.<sup>205</sup> The following sections explore a range of issues surrounding the financial circumstances of women homeowners and the risk of repossession. This analysis is, crucially, embedded in the socio-cultural significance of homeownership for American society. The political ideology of homeownership has been fostered through numerous government initiatives that have promoted, and continue to promote, the expansion of homeownership.<sup>206</sup> In fact, even in the face of the current crisis in mortgage default, the government has responded with the Expanding American Homeownership Act of 2007.<sup>207</sup> These initiatives have played an important role in establishing homeownership as the "normal" tenure, and in linking the economic, social, and cultural meanings of "home" with homeownership. This has important implications in relation to the meanings of home for women, as the relationships between home, homeownership,

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201. Warren, *supra* note 16, at 25.

202. *Id.* at 26.

203. *Id.* at 31, 39 n.74.

204. *Id.* at 25.

205. *Id.* at 30.

206. See, e.g., PRES. GEORGE W. BUSH, A HOME OF YOUR OWN: EXPANDING OPPORTUNITIES FOR ALL AMERICANS (June 2002) (discussing President Bush's agenda to help increase the number of minority homeowners).

207. Expanding American Homeownership Act, H.R. 1852, 110th Cong. (as passed by House, Sept. 18, 2007).

and affordability have highlighted the need for financial security to ensure that homeownership — and, by extension, positive *home* meanings — are successful and sustainable.<sup>208</sup> The following section considers the significance of homeownership for the availability of *home* meanings for women against this backdrop.

#### A. *Women as Homeowners*

One of the central themes underpinning the rejection of *home* in traditional feminist scholarship was the idea that the benefits of home were only available on the basis of privilege, rather than as a universal value.<sup>209</sup> One aspect of this was a concern that the privilege of home was denied to many women who did not have access to the single family home as a result of low income and/or discrimination.<sup>210</sup> A series of economic, social, and employment factors have been identified as creating barriers to homeownership for women living alone or women living with children.<sup>211</sup> This led one commentator to suggest that a woman's best route into homeownership was through the church or registry office door — that is, through a relationship with a man.<sup>212</sup> Research in both the United States and in the United Kingdom has suggested that, at least historically, women have typically entered homeownership by three routes: as separated or divorced women who retain the matrimonial home, as widows who inherit

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208. One of the most striking accounts of government rhetoric concerning the function of homeownership in binding the citizen to the state can be found in then-President Andrew Johnson's treatise in support of the Homestead Act in 1850 — historically one of the most significant triggers for the expansion of homeownership in the United States. Trina Williams Shank, *The Homestead Act: A Major Asset-Building Policy in American History*, in INCLUSION IN THE AMERICAN DREAM: ASSETS, POVERTY, AND PUBLIC 20, 20-25 (Michael Sherraden ed., 2005). In his speech to introduce the first Homestead Act, Johnson predicted that by facilitating the ownership of land among the population at large, the Act would "create the strongest tie between the citizen and the Government." CONG. GLOBE, 31st. Cong., 1st Sess. 951 (1850) (statement of President Johnson). For a more recent critical analysis of the relentless promotion of home ownership in the United States, see Retsinas & Belsky, *supra* note 74, at 1-12.

209. FOX, CONCEPTUALISING HOME, *supra* note 20, at 393.

210. Michael LaCour-Little, *Discrimination in Mortgage Lending: A Critical Review of the Literature*, 7 J. REAL ESTATE LITERATURE 15, 16-18 (1999); Helen F. Ladd, *Evidence on Discrimination in Mortgage Lending*, 12 J. ECON. PERSP. 41, 42 (1998); Emily Rosenbaum, *Racial/Ethnic Differences in Home Ownership and Housing Quality, 1991*, 43 SOC. PROBS. 403, 403-04 (1996); Susan Wachter, *Discrimination in Financial Services: What Do We Know?*, 11 J. FIN. SERVICES RES. 201, 201 (1997).

211. Judith K. Robinson, *A Home of One's Own: Overcoming Gender and Familial Status Barriers to Homeownership* (Feb. 2001) (Ph.D. dissertation, University of Massachusetts Amherst) (discussing various obstacles that stand in the way of successful homeownership for women).

212. Rose Gilroy, *Women and Owner Occupation in Britain: First the Prince, Then the Palace?*, in HOUSING WOMEN 36 (Rose Gilroy & Roberta Woods eds., 1994).

the home from their husbands, or as spinsters who inherit their parents' homes.<sup>213</sup> Women were, on the other hand, less likely to *buy* into homeownership, due to lower incomes, lower earning capacities, and factors affecting women's careers such as child care or caring for dependent adults.<sup>214</sup>

A gender differential in levels of access to homeownership has major implications for the concept of home as a universal value. This is particularly significant in light of the socio-cultural emphasis on *ownership* for delivery of the benefits of *home*. Furthermore, until relatively recently, when women did succeed in entering the homeownership sector this was often as a result of circumstances other than purchase.<sup>215</sup> One explanation for the historic exclusion of women from property ownership was the traditional disadvantage created by the "patriarchal ideologies of private ownership of property."<sup>216</sup> Pamela Sayne described the ideology of private homeownership as "an expression of patriarchal relations that have historically rendered women subordinate to and dependent on men for their housing rights."<sup>217</sup> Sayne's critique identified a gender bifurcation in modern housing practices, whereby "men are the primary producers/owners/controllers of housing and related resources and industries, while women are the users and caretakers."<sup>218</sup> This echoed Young's analysis of the significance of gender in Heidegger's concept of dwelling: that building was divided into male-dominated construction and female-dominated preservation, and supported the argument that the experience of accessing homeownership was differentiated according to gender.<sup>219</sup>

In Madigan, Munro, and Smith's analysis of gender and homeownership, they also drew on the dichotomy between *use value* and *exchange value* to describe gender differences in the meaning of home.<sup>220</sup> This study indicated that the meaning of home for women and for men was permeated by the relative use value and exchange

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213. *Id.*; see also Emily Card, *Women, Housing Access, and Mortgage Credit*, 5 SIGNS s215, s216 (1980).

214. Gilroy, *supra* note 212, at 35. The impact of these factors in the United States was also recognized by Elizabeth Warren. Elizabeth Warren, *Bankrupt Children*, 86 MINN. L. REV. 1003, 1017 (2002) [hereinafter Warren, *Bankrupt Children*].

215. Card, *supra* note 213, at s216; Gilroy, *supra* note 212, at 36.

216. Pamela L. Sayne, *Ideology as Law: Is There Room for Difference in the Right to Housing?*, in SHELTER WOMEN AND DEVELOPMENT: FIRST AND THIRD WORLD PERSPECTIVES 97, 98 (Hemalata C. Dandekar ed., 1993).

217. *Id.*

218. *Id.*

219. Young, *supra* note 91, at 51-53.

220. Ruth Madigan, Moira Munro & Susan J. Smith, *Gender and the Meaning of Home*, 14 INT'L J. URB. & REGIONAL RENEWAL RES. 625 (1990).

value of homeownership and that these values were differentiated across gender lines. For one thing, they argued that "female-headed households are likely to be poorer than male-headed households, and thus less likely to be able to afford owner occupation and to gain access to the wealth-accumulating sector of the housing system."<sup>221</sup> Thus, although women were free to enjoy whatever use value that could flow from renting, female heads of household were relatively disadvantaged in terms of access to the exchange value benefits of homeownership.<sup>222</sup> Even within the framework of exchange value, this study identified three elements which make up the "exchange rights" conferred by homeownership: the right to capital gain, the right to trade the house, and the right to borrow against the value of the house.<sup>223</sup> The study suggested that "[a]ll these features may be experienced differently by men and women even in the same household."<sup>224</sup> While it appeared that both men and women had a rational aspiration towards *successful* homeownership, the degree of control that women and men experienced in relation to the exchange rights associated with homeownership — deciding to trade the property, deciding whether to borrow against the property, or managing capital gain — was differentiated on gender lines.<sup>225</sup>

The problem of access to the exchange value of homeownership has also been identified in relation to women living alone and women who lived in shared households with men. Sayne argued that the housing system — and particularly the growth of homeownership — "foster[ed] institutional sexism" and "the subordination of women" by enabling men, but not women, to benefit from the exchange value of their homes through their control over the property as an economic resource.<sup>226</sup> Sayne claimed that, while male homeowners benefitted

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221. *Id.* at 633. This is because "[w]omen's wages are much less than men's wages on average." *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. Sayne, *supra* note 216, at 99. For women living in households with men, the issue of control over the use of the property as a financial asset has been extensively explored in the context of undue influence. See BELINDA FEHLBERG, *SEXUALLY TRANSMITTED DEBT: SURETY EXPERIENCE AND ENGLISH LAW* 24-33 (1997). The difficulties associated with striking a balance between the reality of a power imbalance for some women in relationships with men, and a reluctance to foster stereotypes of women as 'victims,' in need of paternalistic protection, has emerged in many feminist analyses of the doctrine of undue influence. See Veena K. Murthy, Note, *Undue Influence and Gender Stereotypes: Legal Doctrine or Indoctrination?*, 4 CARDOZO WOMEN'S L.J. 105 (1997-98); see also Rosemary Auchmuty, *Men Behaving Badly: An Analysis of English Undue Influence Cases*, 11 SOC. & LEGAL STUD. 257 (2002).

from "autonomous economic power and access to credit,"<sup>227</sup> women homeowners "as the primary users and caretakers of housing, receive little autonomous social or economic security from their activities and do not gain access to credit."<sup>228</sup> Thus, traditional gender relations appeared to affect not only women's access to homeownership *per se*, but also access to the exchange value of the property (as opposed to its use value) for women homeowners.<sup>229</sup>

This pattern was replicated across multiple jurisdictions that have experienced comparably high levels of growth in the homeownership sector.<sup>230</sup> Smith's research into the gender dimensions of owner-occupation in Australia in the late 1980s reported that many women were forced to rely on the support of a partner in order to gain access to homeownership.<sup>231</sup> Smith claimed that "[h]ome ownership is strongly related to taking a partner at some time in the housing career."<sup>232</sup> This creates an important distinction in the experience of homeownership, as it means that "women and men conveniently stereotyped by many housing analysts as 'owner-occupier households' have, in practice, followed very diverse life paths to attain this outcome. The process of becoming an owner-occupier, as well as the act of sustaining owner-occupation, is gender-differentiated."<sup>233</sup>

The main difference that emerged from this study was the tendency for male dominance in employment and income to offer men a financial advantage in achieving the goal of homeownership, while "family formation strategies" were of greater relevance for women.<sup>234</sup> As Gilroy concluded, based on her research in the United Kingdom, the pathway to homeownership for women was "generally one of ownership and not purchase and that ownership has been arrived at

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227. Sayne, *supra* note 216, at 99.

228. *Id.*

229. Madigan et al., *supra* note 220, at 633.

230. See *infra* notes 231-42 and accompanying text.

231. Susan J. Smith, *Gender Differences in the Attainment and Experience of Owner-Occupation in Australia* 17 (Urb. Res. Inst., Working Paper No. 19, 1989).

232. *Id.* at 17. Smith found that "[o]verall, 77% of men and 76% of women who have entered such a relationship now own, as compared with 23% and 18% of those who have never lived as married." *Id.*

233. *Id.* at 22. Smith concluded that:

[M]en's and women's routes to, and experiences of, even the same, owner occupier households may be very different. The picture is one which confirms women's traditional reliance, for the attainment of owner-occupation, on a partner's income and wealth . . . but which also highlights the importance of women's wages in sustaining owner-occupation, and which recognises the role of women's unpaid labour in maintaining an owner-occupier lifestyle for their partners and children.

*Id.* at 28-29.

234. *Id.* at 23-24.

through their relationship with a man.”<sup>235</sup> Furthermore, Smith also reported that “currently living with a partner [][wa]s the strongest demographic predictor of home ownership.”<sup>236</sup> Both male and female respondents who had previously been married, but were currently separated, divorced, or widowed, were on the whole more likely to have exited from owner occupation and returned to the rental sector.<sup>237</sup> Women, however, fared relatively worse in this context. Smith claimed that a combination of factors, including lower earning capacity and child care responsibilities, meant that women were less likely than men to stay in the homeowner sector after relationships had broken down.<sup>238</sup> McCarthy and Simpson’s study of post-divorce housing in the United Kingdom also highlighted another gender differential in that women *without* children were less likely to retain the family home after divorce.<sup>239</sup>

The idea that many women must depend on a relationship with a man for the privilege of homeownership and thus, in light of the socio-cultural privileging of *ownership*, for the meanings and values of *home*, is problematic when it comes to seeking feminist sponsorship for the concept of home.<sup>240</sup> If the culturally cherished status of homeownership is differentially available to women so that they are dependent on men for access to homeownership, this will further entrench the traditional feminist argument that *home* reinforces patriarchal relationships, constructing men as autonomous actors in the marketplace and women as their dependents. There is a risk, however, that the portrait of women home buyers as dependents may be a double-edged sword: although the idea that women *per se* should be viewed as particularly vulnerable or treated with “special tenderness” has unattractive connotations, it seems clear that some women *are* adversely affected by structural economic inequalities in the wider

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235. Gilroy, *supra* note 212, at 36.

236. Smith, *supra* note 231, at 17.

237. *Id.* at 18. According to Smith:

This suggests that the ending of a relationship (especially through relationship breakdown) may be a significant route out of ownership. Nevertheless, we have already seen that only a small proportion of those who ever attain ownership subsequently leave the tenure, and this is certainly a smaller proportion than those who separate or divorce (let alone become widowed).

*Id.*

238. *Id.* at 20.

239. MCCARTHY & SIMPSON, *supra* note 179 at 39. This study suggested that “the housing aspirations of women without children are realised through new partners, either because they move into the homes of new partners or they move into other circumstances on a temporary basis until they and their new partners are able to make permanent arrangements to set up home together.” *Id.*

240. FOX, CONCEPTUALISING HOME, *supra* note 20, at 363.

economy and the exercise of control rights over the exchange value of the property.<sup>241</sup> Yet, as well as the undesirable conceptual problems linked with presenting women as "victims," there is a danger that targeting additional legal protections at women as a group could undermine women's capacity to contract for credit and to participate fully in the "public sphere" activity of exchange.<sup>242</sup> Even where it is recognized that gender inequality exists, the question of *how* the law can be sensitive to such issues, without constructing women as victims or as incapable of acting in the public sphere, presents persistent challenges.

### *B. The Importance of Income*

Despite evidence of a gender differential in the availability of homeownership *per se*, it may be more useful to characterize the issues underpinning the exclusion of some women from the positive meanings of *home* in terms of *income*. Homeownership itself is, *prima facie*, gender neutral in the sense that access is determined according to the ability to pay.<sup>243</sup> Although homeownership requires access to mortgage credit, an area in which women traditionally experienced discrimination, a range of federal provisions have made it unlawful for lenders to discriminate on grounds of gender and race.<sup>244</sup> The Fair Housing Act of 1968 and the Equal Credit Opportunity Act of 1974 prohibited discrimination in the granting of credit on account of sex and marital status.<sup>245</sup> This legislation, which theoretically eliminated barriers to homeownership for women, has been described as having had a "dramatic effect" on lending policies that had discriminated against women.<sup>246</sup> Furthermore, when it comes to lending practices, Helen Ladd has suggested that, in light of the current competitive lending environment, "lending institutions are unlikely to be willing to forego profits as the price for implementing discrimination."<sup>247</sup> Of

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241. *Id.* at 334-35.

242. *Id.* at 361.

243. *Id.* at 393.

244. See, e.g., Home Mortgage Disclosure Act, 12 U.S.C. § 2801 (a)-(b) (2000); Community Reinvestment Act, 12 U.S.C. § 2901 (2000); Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1) (2000); Fair Housing Act, 42 U.S.C. § 3604 (2000).

245. Fair Credit Housing Act, 42 U.S.C. § 3604 (2000); Equal Credit Opportunity Act, 15 U.S.C. § 1691 (2000).

246. See ROBERT SCHAFFER & HELEN F. LADD, DISCRIMINATION IN MORTGAGE LENDING 299-300 (1981); see also Helen F. Ladd, *Equal Credit Opportunity: Women and Mortgage Credit*, 72 AM. ECON. REV. 166, 170 (1982) [hereinafter Ladd, *Equal Credit Opportunity*]; Helen F. Ladd, *Evidence on Discrimination in Mortgage Lending*, 12 J. ECON. PERSP. 41, 49 (1998) [hereinafter Ladd, *Evidence on Discrimination*].

247. Ladd, *Evidence on Discrimination*, *supra* note 246, at 45.

course, lenders might still wish to discriminate for profit-oriented motives, for example, because a particular group is more likely to default, making membership of that group a "cheap screening device" for the lender.<sup>248</sup> Ladd suggested, however, that while racial discrimination in lending has remained problematic in the wake of anti-discrimination legislation, the evidence suggests that discrimination against women has all but disappeared.<sup>249</sup>

This view has been challenged by Judith Robinson. Although Robinson acknowledged the "common public and academic belief that while racial discrimination in lending has persisted, gender and familial-status discrimination has ended,"<sup>250</sup> her research indicated that certain women and families with children still experienced discrimination in access to mortgage lending.<sup>251</sup> Robinson also argued that preliminary evidence showed that discrimination on gender and family type differed markedly according to race, but that single men with children, across racial groups, were less disadvantaged than single women with children.<sup>252</sup> Evidence of discrimination in mortgage lending based on gender and family-type indicated that "many women, especially low-income mothers and their children, have been excluded from the opportunity to enjoy the many benefits of homeownership, from wealth accumulation to security of tenure."<sup>253</sup> The suggestion that women continue to experience direct discrimination in this context is an important issue which should be addressed by the mortgage lending industry and government regulators, yet it is not the sole basis for concerns regarding equal access to mortgage credit.

Another factor that has emerged in debates surrounding the availability of homeownership based on gender and family-type is the relationship between access to homeownership and the housing consumer's unwillingness to incur substantial debt. In Card's 1980

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248. *Id.* at 46.

249. *Id.* at 49 ("After the passage of the Equal Credit Opportunity Act in 1976, it apparently did not take long for banks to change their policies towards women, many of which may have been based on out-dated stereotypes about women's commitment to the labor market.").

250. Judith K. Robinson, *Race, Gender, and Familial-Status: Discrimination in One US Mortgage Lending Market*, 8 FEMINIST ECON. 63, 63 (2002).

251. *Id.*

252. *Id.* at 63-64 (claiming that, while white couples with children and white single mothers were more likely to experience discrimination if a female partner was engaged in employment, African-American or Hispanic couples or single mothers were more likely to experience discrimination if the female partner did not work).

253. *Id.* at 80. For a discussion on the importance of homeownership as a vital investment tool, see Arthur B. Kennickell, Martha Starr-McCluer & Brian J. Surette, *Recent Changes in U.S. Family Finances: Results from the 1998 Survey of Consumer Finances*, 86 FED. RES. BULL. 1, 15, 18 (2000).



analysis, she found that economic recession, unemployment, and lower incomes had discouraged and prevented many women from taking on mortgages.<sup>254</sup> The lower proportion of women applicants for mortgage credit was attributed to both economic and psychological factors. The economic issues included the fact that "female-headed households . . . [were] likely to be poorer than male-headed households, and thus less likely to be able to afford owner occupation and to gain access to the wealth-accumulating sector of the housing system."<sup>255</sup> Card's study suggested that a range of gender-sensitive socio-cultural factors precluded women from incurring mortgage debts, particularly in an environment of economic insecurity and unsustainable homeownership.<sup>256</sup> Card argued that "[s]ociopsychological barriers operated to discourage women who were not trained to think in terms of incurring debt. Mortgages . . . appeared to be awesome responsibilities and were not readily obtainable."<sup>257</sup> Although the mortgage lending market has transformed since 1980, the idea of an enduring gender differential in access to credit for women was reviewed more recently in a New Jersey-based empirical study in 1997.<sup>258</sup> The study indicated that, while women stood an equal chance of being *granted* a mortgage once they had made an application, women were four times *less likely* than men to be primary mortgage applicants.<sup>259</sup>

Access to homeownership, including the willingness to incur debt, is also, in turn, linked to other measures of economic well-being, including income level and levels of accumulated wealth.<sup>260</sup> In a recent study of gender, race, homeownership, and wealth accumulation in the United States, Stanley Sedo and Sherrie Kossoudji found:

The constraints to ownership are numerous and women often find themselves on the wrong side of the barriers to purchasing a home. Two barriers stand out: Women earn less than men, on average, and higher incomes are associated with an increased ability to save and with higher credit scores. Women are more likely than

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254. Card, *supra* note 213, at s218-19.

255. Madigan et al., *supra* note 220, at 633.

256. Card, *supra* note 213, at s216.

257. *Id.*

258. NEW JERSEY CITIZEN ACTION, WOMEN'S ACCESS TO MORTGAGE LENDING IN NEW JERSEY (1997), <http://www.policy.rutgers.edu/CUPR/Community/organizations/projcomm/waml/intro.htm> (last visited Mar. 15, 2008).

259. *Id.*

260. STANLEY A. SEDO & SHERRIE A. KOSSOUDJI, INST. FOR THE STUDY OF LABOR, ROOM OF ONE'S OWN: GENDER, RACE AND HOME OWNERSHIP AS WEALTH ACCUMULATION IN THE UNITED STATES 2-3 (2004).

men to live in single earner households with children — raising the “obligation ratio,” or the competing need for the use of resources.<sup>261</sup>

Much attention has been focused on inequalities in both income levels<sup>262</sup> and levels of accumulated wealth in the United States.<sup>263</sup> In addition, statistical analysis has indicated that household wealth in the United States varies according to both gender and family type.<sup>264</sup> For example, Lucie Schmidt and Purvi Sevak reported large differences in observed wealth between single-female-headed households and married couples, even controlling for position in life cycle, education, and family earnings.<sup>265</sup> The accumulated wealth of single females in the United States — again controlling for life cycle, education, inheritance, and family — was also found to be significantly lower than the wealth of single men, although the gap was smaller for younger households.<sup>266</sup> In another recent study, Alexis Yamokoski and Lisa Keister claimed that, while there is a minimal gender gap between the wealth of never-married people — when controlling for parenthood — there was strong evidence of a family gap in household wealth accumulation, with single mothers and fathers economically disadvantaged in comparison to adults without children; yet single mothers suffer the most severe economic penalties in household wealth accumulation.<sup>267</sup>

Although it is generally recognized that homeownership is the most important single component of wealth for most people, there is relatively little literature focusing specifically on gender differences in homeownership in the United States.<sup>268</sup> Where gender is a

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261. *Id.*

262. See STEPHEN J. ROSE & HEIDI I. HARTMANN, INST. FOR WOMEN'S POLICY RES., STILL A MAN'S LABOR MARKET: THE LONG-TERM EARNINGS GAP, at iii (2004) (suggesting that, while the gender gap is closing, with women who work full-time now earning 77% of what men earn, the gender-income gap remains significant when analysis takes account of both women's lower wages and their greater likelihood to work part-time or to take time out of the workforce).

263. See, e.g., Carmen Diana Deere & Cheryl R. Doss, *The Gender Asset Gap: What Do We Know and Why Does it Matter?*, 12 FEMINIST ECON. 1 (2006) (examining various factors that affect women's ability to accumulate wealth).

264. Lucie Schmidt & Purvi Sevak, *Gender, Marriage, and Asset Accumulation in the United States*, 12 FEMINIST ECON. 139, 141 (2006).

265. *Id.* at 142.

266. *Id.*

267. Alexis Yamokoski & Lisa A. Keister, *The Wealth of Single Women: Marital Status and Parenthood in the Asset Accumulation of Young Baby Boomers in the United States*, 12 FEMINIST ECON. 167, 189 (2006).

268. See SEDO & KOSSOUDJI, *supra* note 260, at 2 (claiming that gender issues are typically ignored in housing studies in the U.S.). But see Joseph Gyourko & Peter Linneman, *Analysis of the Changing Influences on Traditional Households' Ownership Patterns*, 39 J. URB. ECON. 318 (1996) (arguing that gender issues are avoided by a focus on married

factor in empirical studies, it has tended to be through a focus on women as heads-of-household according to family type, with the household as the unit of analysis, without addressing intra-household issues.<sup>269</sup> One study that attempted to ascertain overall gender disparities, disparities that arise because of differences in family type, and differences that arise within family type, reported that "the most important aspect of the homeownership gap across gender and family type exists for family type itself."<sup>270</sup> The proposition that family type, including marital status and parenthood, has a larger impact than gender alone on women's access to homeownership is supported by national homeownership statistics.<sup>271</sup> In the Annual Statistics published by the U.S. Census Bureau for 2005, homeownership rates in the United States were tracked from 1982 to 2005. Overall, in that period, homeownership by household rose from 64.8% of all households in 1982 to 68.9% in 2005, with a steady period of growth from 1997 onwards.<sup>272</sup> Taking into account gender and family type, the highest rates of homeownership were measured among married-couple households, which rose from 78.5% in 1982 to 84.2% in 2005, with a steady period of growth from 1995.<sup>273</sup> These statistics also indicate that homeownership rates for married couples have been consistently about fifteen percent above the national average.<sup>274</sup>

When considering this raw data, it is useful to note that, according to the U.S. Census Bureau, cohabiting couples are not considered within the category "other families — non-marital households," but are classified as "non-families."<sup>275</sup> This is interesting in light of debates surrounding "family" and "home," and specifically with the

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couples only); Yannis M. Ioannides & Stuart Rosenthal, *Estimating the Consumption and Investment Demands for Housing and Their Effect on Housing Tenure Status*, 76 REV. ECON. & STAT. 127, 132-33 (1994) (noting that studies of homeownership that reference female heads-of-household, gender, or marital status do so as a control variable but not as a point of discussion).

269. SEDO & KOSSOUDJI, *supra* note 260, at 5.

270. *Id.* at 26.

271. U.S. Census Bureau, Housing Vacancies and Homeownership, <http://www.census.gov/hhes/www/housing/hvs/hvs.html> (last visited Mar. 15, 2008).

272. U.S. Census Bureau, Housing Vacancies and Homeownership, Annual Statistics: 2005, Table 15: Homeownership Rates for the United States, by Age of Householder and by Family: 1982 to 2005, <http://www.census.gov/hhes/www/housing/hvs/annual05/ann05t15.html> (last visited Mar. 15, 2008) [hereinafter U.S. Census Bureau, Table 15: Homeownership Rates].

273. *Id.*

274. *Id.*

275. U.S. Census Bureau, Housing Vacancies and Homeownership, Annual Statistics: 2005, Appendix A: Definitions and Explanations, <http://www.census.gov/hhes/www/housing/hvs/annual05/ann05def.html> (last visited Mar. 15, 2008) [hereinafter U.S. Census Bureau, Definitions and Explanations].

need to define "family" when classification is based on family status. The format in which national homeownership data is currently collected by the Census Bureau precludes specific analysis of homeownership rates for cohabiting couples or, specifically, for single custodial parents. "Other family households" are defined as households consisting of a group of two or more persons related by birth, marriage, or adoption and residing together.<sup>276</sup> This category would include single custodial parents, but not cohabitants, who are classified as "non-families," and are tracked according to male and female heads-of-household.<sup>277</sup> For male-headed households, homeownership rates have remained relatively stable across the period, with some fluctuation from year to year, but increasingly falling behind the rising national average for all households.<sup>278</sup> Female-headed households in the same category are currently even less likely to fall within the homeowner sector compared to male-headed "other families."<sup>279</sup> Although the gap is closing, with an increase in homeownership among female-headed "other families" from 47.1% in 1982 to 51.0% in 2005, the difference remains statistically significant, with female-headed non-marital family households falling eight percentage points behind the equivalent male-householder group.<sup>280</sup> This is particularly interesting because this category includes single parent families, although it is difficult to draw clear conclusions because the data does not distinguish between single-parent families and other "non-marital families" (for example, adult siblings or parent and adult offspring).

The gender gap is currently narrowest amongst "non-family" households of two or more persons who are not related to each other,<sup>281</sup> which includes, but is not restricted to, cohabiting households.<sup>282</sup> Although levels of homeownership are substantially lower across this category, compared to the national average, female-headed "non-family" households have been, and remain, more likely to own their own homes (30.1% in 1982, 44.7% in 2005) than male-headed non-family households (28.3% in 1982, 41.7% in 2005).<sup>283</sup> Finally, in another apparently successful sector for women, among one-person "non-family" households women have, across the period, been more

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276. *Id.*

277. *Id.*

278. U.S. Census Bureau, Table 15: Homeownership Rates, *supra* note 272. In 1982, 59.3% of male-headed non-marital "family" households were owner-occupiers; in 2005, this figure had fallen slightly to 59.1%. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. U.S. Census Bureau, Definitions and Explanations, *supra* note 275.

283. U.S. Census Bureau, Table 15: Homeownership Rates, *supra* note 272.

likely to own their homes (51.2% in 1982; 59.6% in 2005), and although single male householders, initially much less likely to be homeowners, have closed the gap to some extent during this period (38% in 1982, 50.3% in 2005),<sup>284</sup> single women householders continue to perform better than single men in relation to homeownership.<sup>285</sup>

The theme of single women outperforming single men in homeownership statistics has also emerged in some useful work by Sedo and Kossoudji based on data that was gathered in the Census Bureau's *Survey of Income and Program Participation*, that sought to develop further insight into gender, homeownership, and household types.<sup>286</sup> As with the Annual Statistics considered above, the U.S. Census Bureau's practice of collecting data through the "household reference person," rather than in relation to individual owners (or occupiers), does not present a pellucid picture of women homeowners in different living arrangements.<sup>287</sup> However, although the source data used by Sedo and Kossoudji was organized around the same set of family-types discussed above, their analysis applied regression equations to the data — controlling for gender, income, age, and other characteristics — and concluded that "[e]ven though female households are less likely to own their own homes, when other characteristics of the household are accounted for in the regressions, female householders are actually 3.9 percentage points more likely to own homes than male householders."<sup>288</sup> Furthermore, after triangulating the data on homeownership with equations for home value and home equity levels, Sedo and Kossoudji found that "family-type" was associated with differences that are *larger* than those based solely on gender and *as large as* those based solely on race.<sup>289</sup> The clearest advantages were experienced by married couple households over any other family type,<sup>290</sup> but also, interestingly, for single women relative to single men.<sup>291</sup>

These findings have important implications for feminist re-analyses of *home* (including homeownership) as a universal value, and the complex relationships between gender, income, and wealth accumulation as they have developed within the context of homeownership. It is particularly unfortunate that the tendency to focus on "family-type" rather than individuals in government homeownership statistics tends to conceal the complex intersections of various types

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284. *Id.*

285. *Id.*

286. SEDO & KOSSOUDJI, *supra* note 260, at 5.

287. *Id.* at 5-6.

288. *Id.* at 12.

289. *Id.* at 13.

290. *Id.* at 14.

291. *Id.* at 15.

of inequality, which have underpinned contemporary debates on the rise of economic inequalities across traditional cleavages such as gender and race.<sup>292</sup> On the one hand, in the United States, as in other industrialized countries, the post-war period has witnessed a dramatic upsurge in female participation in the labor market.<sup>293</sup> Although employment rates for women still trail behind statistics for men, women are still more likely to work part time, and the pay differential remains extant, there is some evidence to suggest that the gap is closing.<sup>294</sup> One important aspect of this was demonstrated by recent data, published by the U.S. Department of Labor Statistics in 2006,<sup>295</sup> which indicated that women who are active in the labor market are predominately concentrated in management, professional, and related occupations (38% of employed women, compared to 32% of employed men), service occupations (20% of employed women, compared to 13% of employed men), and sales and office populations (35% of employed women, compared to 17% of employed men).<sup>296</sup> Fewer than one in ten women were employed in construction and maintenance occupations or production and transport occupations, where men continue to dominate.<sup>297</sup>

These trends raise an interesting issue concerning the bifurcation of women's opportunities in relation to employment and, by extension, in related economic activities, including homeownership and the ability to service debts. While, on the one hand, there is evidence to indicate that some women are doing better than ever, and better than men, for many other women it is clear that barriers still exist in relation to income and access to credit.<sup>298</sup> A similar pattern has also been recognized in the United Kingdom, where research has shown that while women continue to constitute a large portion of the urban poor, there is evidence of growing affluence among women in professional and managerial careers.<sup>299</sup> "Growing numbers of women with

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292. For further discussion of the declining impact of large-scale, material and categorical structures of inequality, and the rise of a more complex model of the interactions of gender, race, class, and localities in the United States, see LESLIE MCCALL, *COMPLEX INEQUALITY: GENDER, CLASS, AND RACE IN THE NEW ECONOMY* 5 (2001).

293. Susan E. Shank, *Women and the Labor Market: The Link Grows Stronger*, MONTHLY LABOR REV., Mar. 1988, at 3, 3.

294. *Id.* at 3, 6.

295. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CHARTING THE U.S. LABOR MARKET IN 2005 (June 2006), available at <http://www.bls.gov/cps/labor2005/chartbook.pdf> [hereinafter BUREAU OF LABOR STATISTICS, CHARTING THE U.S.].

296. *Id.* at chart 5-7.

297. *Id.*

298. See *supra* notes 250-91 and accompanying text.

299. Liz Bondi & Hazel Christie, *The Best of Times for Some and the Worst of Times for Others? Gender and Class Divisions in Urban Britain Today*, 31 GEOFORUM 329, 329-30 (2000).

professional and vocational qualifications have moved into 'core' jobs and are advancing up the career ladder particularly in the professions, public administration and management,"<sup>300</sup> suggesting these women enjoy higher earning power and greater strength in the home buyers market.

The argument that economic inequality is now increasingly significant *across* gender, rather than within genders, is also supported by evidence that shows increasingly convergent patterns in U.S. labor market participation rates for women and for men. For example, participation rates for women increased from 43% of adult women in 1970, to stabilize in the early 1990s at around 60%; meanwhile, participation rates for adult men have waned over time (from 83% in 1970 to 76% in 2005).<sup>301</sup> It is also interesting to note that while overall participation rates for women remain lower, analysis by age shows that the impact of marriage and motherhood on women's labor force participation has declined since 1970, and by 2005 was no longer evident.<sup>302</sup> Similarly, unemployment rates for adult men and women have tracked quite closely since the early 1980s.<sup>303</sup> One enduring difference in employment patterns is that women continue to be more than twice as likely to work part-time compared to men,<sup>304</sup> although year-round, full-time work has risen steadily among women.<sup>305</sup> Of course, there was considerable ground to cover in this period, and this report recognized that "[w]hile women fared better than men over this time period [1970 to 2005], in a sense they were playing 'catch up' to men."<sup>306</sup> The relative gains achieved by women in the 1970s and 1980s have, in the context of overall trends in the U.S. labor market, been described as "swimming upstream . . . [i]n the face of . . . rising inequality."<sup>307</sup> Nevertheless, it is significant to note the underlying progress reflected in these statistics, that "[t]he growth in women's earnings reflects in large part a rise in the proportion of working women with a college education, an increase in women in higher-paying managerial and professional jobs, and a shift toward more year-round, full-time work among women."<sup>308</sup>

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300. *Id.* at 331.

301. BUREAU OF LABOR STATISTICS, CHARTING THE U.S., *supra* note 295, at chart 5-1.

302. *Id.* at chart 5-2.

303. *Id.* at chart 5-3.

304. *Id.* at chart 5-5.

305. *Id.* at chart 5-6.

306. *Id.* at chart 5-9.

307. Francine D. Blau & Lawrence M. Kahn, *Rising Wage Inequality and the U.S. Gender Gap*, 84 AM. ECON. REV. 23, 23 (1994); *see also* Lawrence F. Katz & Kevin M. Murphy, *Changes in Relative Wages, 1963-1987: Supply and Demand Factors*, 107 Q. J. ECON. 35, 35 (1992).

308. BUREAU OF LABOR STATISTICS, CHARTING THE U.S., *supra* note 295, at chart 5-9.

The argument that economic inequality has become increasingly significant *across* gender, with lower-income women and men experiencing disadvantage relative to higher-income women and men,<sup>309</sup> is particularly interesting in relation to the relevance of gender for the achievement of homeownership. Francine Blau and Lawrence Kahn identified two “dramatic trends” in the U.S. labor market in the mid-1990s: the decline in the male/female wage gap, on the one hand, and rising within-group labor market inequality, on the other.<sup>310</sup> Indeed, the large and persistent rise in “within-groups” wage inequality in the United States over the last several decades has been explored in an extensive literature,<sup>311</sup> and this inequality has been attributed to several factors, including the erosion of labor market institutions affecting the wages of low and middle-wage workers,<sup>312</sup> shifts in supply and demand for skills,<sup>313</sup> the declining real value of the minimum wage,<sup>314</sup> and the mechanical effects of the changing composition of the U.S. labor force during the 1990s as a result of rising educational standards and experience.<sup>315</sup> Plotting trends from 1963 to 2003, Autor, Katz, and Kearney identified a “sizeable expansion” of both the male and female wage distributions and “a monotone (and almost linear) spreading out of the entire wage distribution for women.”<sup>316</sup> This rise in “within-group” inequality casts an interesting perspective on analysis of gender difference in access to homeownership as a “universal value,” particularly in light of the socio-cultural significance of successful homeownership for the meaning and value of *home*.

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309. Blau & Kahn, *supra* note 307, at 23.

310. *Id.*

311. See John Bound & George Johnson, *Changes in the Structure of Wages in the 1980's: An Evaluation of Alternative Explanations*, 82 AM. ECON. REV. 371, 371 (1992); Chinhui Juhn, Kevin M. Murphy & Brooks Pierce, *Wage Inequality and the Rise in Returns to Skill*, 101 J. POL. ECON. 410, 410 (1993); Katz & Murphy, *supra* note 307, at 35; Frank Levy & Richard J. Murnane, *U.S. Earnings Levels and Earnings Inequality: A Review of Recent Trends and Proposed Explanations*, 30 J. ECON. LITERATURE 1333, 1333-34 (1992); Kevin M. Murphy & Finis Welch, *The Structure of Wages*, 107 Q. J. ECON. 285, 285 (1992).

312. DAVID H. AUTOR, LAWRENCE F. KATZ & MELISSA S. KEARNEY, TRENDS IN U.S. WAGE INEQUALITY: REVISING THE REVISIONISTS 1 (Mar. 2007), available at <http://econ-www.mit.edu/files/580> [hereinafter AUTOR ET AL., TRENDS IN U.S. WAGE INEQUALITY].

313. *Id.*; see also Lawrence F. Katz & David H. Autor, *Changes in the Wage Structure and Earnings Inequality*, in A HANDBOOK OF LABOR ECONOMICS 1463, 1525-26 (Orley Ashenfelter & David Card eds., 1999).

314. David S. Lee, *Wage Inequality in the United States During the 1980's: Rising Dispersion or Falling Minimum Wage?*, 114 Q. J. ECON. 977, 978 (1999).

315. See Thomas Lemieux, *Increasing Residual Wage Inequality: Composition Effects, Noisy Data, or Rising Demand for Skill?*, 96 AM. ECON. REV. 461, 462 (2006).

316. AUTOR ET AL., TRENDS IN U.S. WAGE INEQUALITY, *supra* note 312, at 6.



In analyzing gender differences, Linda McDowell has argued that "growing disparities between women's social position" have been compounded by "the impossibility of analysing gender relations separately from class relations."<sup>317</sup> When it comes to household wealth and access to homeownership, the reconfiguration of gender and class in post-industrial societies — including the rise of the service economy, the rise in women's labor market participation and career expectations, and changes in women's educational attainments and reduced welfare support for all but the poorest families — has caused a major bifurcation in housing achievements: between households with two professional salaries, for example, and those with low incomes, one income, or no incomes.<sup>318</sup> Specifically, for women as homeowners, important cleavages have emerged between women in different household types, or with other diverse household characteristics, such as education and income.<sup>319</sup> Significantly, for those women who are prospering economically, Sedo and Kossoudji claimed that "[w]omen appear to convert higher earnings and more education into housing more than men."<sup>320</sup> Taking this evidence into account, it is arguable that the "privilege" of homeownership (and so, it would seem, of the positive values of *home* associated with ownership) is not, at least so far as access is concerned, differentiated along simple gender lines. Rather, a much more complex interplay of income, wealth, educational attainment, and employment patterns, as well as family formation strategies, gender, and race, appear to influence access to the socially and culturally cherished institution of homeownership.

### *C. The Sustainability of Homeownership*

Even when homeownership rates in the United States were at an all-time high,<sup>321</sup> the issue of affordability was increasingly problematic across the sector, especially for lower-income households.<sup>322</sup> This has important ramifications for the sustainability of homeownership for those already within the sector. Recent housing research

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317. Linda McDowell, *Reconfigurations of Gender and Class Relations: Class Differences, Class Condescension and the Changing Place of Class Relations*, 38 *ANTIPODE* 825, 835 (2006).

318. *Id.* at 827-28.

319. *Id.* at 839-40.

320. See SEDO & KOSSOUDJI, *supra* note 260, at 16.

321. Joseph Gyourko, *The Changing Strength of Socioeconomic Factors Affecting Home Ownership in the United States: 1960-1990*, 45 *SCOT. J. POL. ECON.* 466, 466 (1998) ("[A]pproximately 65% of the US households [were] owner-occupiers, up from 60% in 1960.").

322. *Id.*

identified significant “gaps” in affordability, which will undoubtedly impact the sustainability of the owner-occupier sector.<sup>323</sup> For example, Joseph Gyourko’s research suggested:

A significant shift in home ownership affordability has occurred since the mid-1970s for less well educated and lower income households. Falling real wages have combined with rising constant quality real home prices to make lower quality homes, which were affordable in 1974, unaffordable to many comparable households in the 1990s. This problem promises to worsen in the near term as real wages of low skilled workers continue to erode in an increasingly global economy and as ever higher quality homes continue to filter down the housing stock. Virtually no new housing is being produced that is of low enough quality to be affordable to low skill households who want to own.<sup>324</sup>

Much of the government’s attention has been focused on the consequences of affordability for access to homeownership. One study published by the Department of Housing and Urban Development (HUD) in 2005 indicated that while homeownership rates were currently at historically high levels for all sections of the U.S. population, “dramatic gaps in homeownership rates have been stubbornly present over the last several decades, and even increased somewhat during the decade of the 1990s.”<sup>325</sup> This study identified several factors accounting for the homeownership gap, including not only race and ethnicity, but also differences due to income, wealth, marital status, and age of household.<sup>326</sup> Yet, while concerns about homeownership rates have triggered major policy initiatives under both the Clinton and Bush Administrations to increase access to homeownership,<sup>327</sup> it is also important to note that it is not only access, but the

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323. *Id.* at 487.

324. *Id.* at 487.

325. CHRISTOPHER E. HERBERT ET AL., U.S. DEP’T OF HOUS. & URBAN DEV., HOME-OWNERSHIP GAPS AMONG LOW-INCOME AND MINORITY BORROWERS AND NEIGHBORHOODS, at v (Mar. 2005), available at <http://www.huduser.org/Publications/pdf/HomeownershipGapsAmongLow-IncomeAndMinority.pdf>. The Executive Summary states that:

As of 2004, the white homeownership rate was 76 percent while African-American and Hispanic homeownership rates remained below 50 percent, and the Asian rate was 60 percent. At the same time households with very-low income had a homeownership rate that was 37 percentage points below the rate for high-income households.

*Id.*

326. *Id.* at v-vi.

327. Marc A. Weiss, Prague Inst. for Global Urban Dev., National Housing Policy in the U.S. for the 21st Century, [http://www.globalurban.org/housing\\_us.htm](http://www.globalurban.org/housing_us.htm) (last visited Mar. 15, 2008). The National Homeownership Strategy was President Clinton’s policy for

*sustainability* of homeownership that will have a significant impact on national homeownership rates over the medium and long term.<sup>328</sup>

Although those who step onto the housing ladder are colloquially known as "homeowners," many are more accurately described as being in the *process* of buying their homes, subject to a mortgage: as "homebuyers" rather than "homeowners."<sup>329</sup> For most households, the purchase of a dwelling house is only possible with funding from loan capital, which is usually secured against a mortgage over the property.<sup>330</sup> As the borrower makes repayments on the mortgage loan, their equity in the property increases until the mortgage is discharged and the "homebuyer" finally becomes an outright owner.<sup>331</sup> Yet, while the journey from initial purchase to outright ownership will usually require periodic payments over several years, in socio-cultural terms, home buyers obtain the badge of "owner-occupier" as soon as the purchase is made.<sup>332</sup> Nevertheless, it is important to recognize that the status associated with owner-occupation, and the putative benefits of homeownership, are only as stable as the mortgagor's ability to make repayments on debts secured against the property. Successful homeownership — including the benefits associated with acquiring

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increasing homeownership rates. In a letter to Henry Cisneros, then-Secretary of Housing and Urban Development, dated November 3, 1994, President Clinton wrote:

Homeownership is the American Dream. Our nation has embraced this dream since the National Housing Act of 1949 made 'a decent home and a suitable living environment for every American family' a goal of national policy. The United States is the first major industrial country to make homeownership a reality for a majority of its people. Thanks to effective cooperation between industry and government, the doors of homeownership have been opened to millions of families in the past 45 years. However, since 1980, the national homeownership rate has been declining. Reversing this trend is vital to American families, to communities, and to our economy. Homeownership strengthens families and stabilizes communities. It encourages savings and investment and promotes economic and civic responsibility. Expansion of homeownership is an integral part of the Administration's economic plan. It spurs new investment, strengthening the economy and creating jobs. A stronger economy in turn enables more people to buy homes. For all these reasons, it is in our national interest to expand homeownership opportunities for all Americans.

*Id.*; see also Yongheng Deng & Stuart Gabriel, *Risk-Based Pricing and the Enhancement of Mortgage Credit Availability Among Underserved and Higher Credit-Risk Populations*, 38 J. MONEY, CREDIT & BANKING 1431, 1432 n.2 (2006) (discussing efforts to increase homeownership).

328. See DONALD R. HAURIN & STUART S. ROSENTHAL, U.S. DEP'T OF HOUS. & URBAN DEV., *THE SUSTAINABILITY OF HOMEOWNERSHIP: FACTORS AFFECTING THE DURATION OF HOMEOWNERSHIP AND RENTAL SPELLS*, at v (Dec. 2004); available at <http://www.huduser.org/Publications/pdf/homeownsustainability.pdf>.

329. See Card, *supra* note 213, at s216.

330. *Id.*

331. BLACK'S LAW DICTIONARY 1026 (7th ed. 2007).

332. Card, *supra* note 213, at s215-16.

positive *home* meanings as an owner — is clearly dependent on income levels.<sup>333</sup> Similarly, the negative aspects of *home* are strongly associated with financial insecurity, default, and loss of one's home at the hands of a creditor.<sup>334</sup> When considering the significance of gender in the context of homebuying, it would seem that factors such as the gender pay differential, child care, and other caring responsibilities disadvantage some women's earning power relative to men.<sup>335</sup> It may be more appropriate, however, to focus more broadly on the gap between financially stable or well-off households and low income households including, but not limited to, female-headed households.

This casts an interesting light on the issues relating to "women as homeowners," specifically when evaluating the availability of *home* as a privilege or a universal value. It might be more appropriate to focus on the particular difficulties that low-income households — including female-headed low-income households — experience in accessing homeownership, rather than orienting policy discourse around gender alone. The same logic applies to the sustainability of homeownership for women: research in both the United States and the United Kingdom in the 1980s and 1990s suggested that women living in low-income households experience a heightened risk of default and therefore of exposure to possession actions.<sup>336</sup> This issue has been explored in the context of post-divorce housing, where empirical studies have suggested that while women — particularly custodial mothers — may succeed in retaining the family home on divorce, a critical factor in sustaining the ownership of such properties is the household's income after the divorce.<sup>337</sup> For example, McCarthy and Simpson have suggested that the drop in household income levels following relationship breakdown may mean that custodial parents who acquire the house (subject to any debts secured against it) find it a pyrrhic victory, as the costs of sustaining homeownership — meeting mortgage payments and other household costs, and even possibly also paying off a former partner for their share — are unmanageable, resulting in exposure to the risk of repossession.<sup>338</sup>

The sustainability of homeownership for low-income households was explored in a recent study by Haurin and Rosenthal, which found

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333. Gilroy, *supra* note 212, at 39.

334. *Id.*

335. *Id.* at 35.

336. *Id.* at 39.

337. *Id.* See also HARRELL R. RODGERS, POOR WOMEN, POOR CHILDREN: AMERICAN POVERTY IN THE 1990S, at 65-66 (3d ed. 1996).

338. MCCARTHY & SIMPSON, *supra* note 179, at 29, 127 (indicating there is evidence that in some low-income cases, maintenance claims are waived in return for the equity in the matrimonial home).

that while homeownership *was* sustainable for "typical" low-income households, a number of factors rendered some households "atypical," and "[a]mong the demographic variables, being (and remaining) married, greater education and cognitive ability, a smaller family size, and greater age of the respondent all reduce the likelihood of terminating a spell of ownership. Race, particularly being Black, substantially increases the hazard associated with termination of homeownership."<sup>339</sup> Not surprisingly, low-income households experienced a higher risk of losing their homes at the hands of a creditor.<sup>340</sup>

Haurin and Rosenthal also highlighted the significance of changes in family income as a factor in exposing households to unsustainability in relation to the repayment of debts and, by extension, to unsustainable homeownership.<sup>341</sup> Such changes can, for example, result from a change in the number of earners and the termination of marriage.<sup>342</sup> Although this study did not explicitly focus on gender in the termination of homeownership, it did emphasize the vulnerability of some households, particularly lower-income households, to the risk of repossession.<sup>343</sup>

Successful homeownership is almost entirely dependent on the ability to pay, and Warren's analysis of bankruptcy as a "women's issue,"<sup>344</sup> based on evidence indicating an increase in the proportion of women bankrupts, especially single filing women who are heads of households, now the fastest growing category of bankrupts,<sup>345</sup> highlighted the exposure of women. Warren focused on "divorced and separated women with children, [who] are facing a rapidly growing risk of economic collapse."<sup>346</sup> Warren also highlighted the specific impact of child-care responsibilities on debtor default and, ultimately, on the risk that the household will be exposed to bankruptcy and the

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339. DONALD R. HAURIN & STUART S. ROSENTHAL, U.S. DEP'T OF HOUS. & URBAN DEVELOPMENT, *THE GROWTH OF EARNINGS OF LOW-INCOME HOUSEHOLDS AND THE SENSITIVITY OF THEIR HOMEOWNERSHIP CHOICES TO ECONOMIC AND SOCIO-DEMOGRAPHIC SHOCKS* 3 (Apr. 2005), available at <http://www.huduser.org/Publications/pdf/EarningsOfLowIncomeHouseholds.pdf>.

340. *Id.* at 12 ("Because we expect low-income respondents to have stretched their income when committing to a mortgage payment, this relationship of decreasing income and loss of ownership is not surprising.").

341. *Id.* at 12-13.

342. *Id.* at 13 ("Of those low-income respondents terminating homeownership, twice as many ended a marriage as became married during the year of termination of ownership.").

343. *Id.* at 12-16.

344. Warren, *What Is a Women's Issue?*, *supra* note 16, at 23.

345. *Id.* at 21.

346. *Id.* at 25 ("[D]ata from the bankruptcy courts document a shocking decline in the financial health of a growing group of women.").

loss of their home in an action for possession proceedings or in a foreclosure.<sup>347</sup> Thus, although “[c]hildren do not file for bankruptcy, . . . the story of bankruptcy is a story about children.”<sup>348</sup> This result stems from two related factors. First, the presence of dependents in a household, including children, disabled adult family members, grandparents, and other extended family, means that household income must be stretched to provide for a greater number of people.<sup>349</sup> Second, caring for dependents may also reduce the caretaker’s earning capacity and reduce the overall income of the household.<sup>350</sup> In fact, Warren’s research indicated the “presence of children in a household — with nothing more — increases the likelihood that the household will be in bankruptcy by three-fold (302%).”<sup>351</sup> Warren’s data also indicated a hierarchy of risk based on different types of female-headed households.<sup>352</sup> Unmarried mothers with minor children were at the greatest risk, followed by two-adult households with children, while those who did not have children were at the lowest risk of bankruptcy.<sup>353</sup> In fact, the link between children and bankruptcy led Warren to question whether, as a matter of public policy, the financial burden of raising children should be shouldered by the wider society.<sup>354</sup> This solution would allow the risks of indebtedness for such households to be spread among the larger population, rather than falling on the shoulders of individual households and families.<sup>355</sup>

Warren’s argument can be appropriately and usefully employed when re-imagining the concept of *home* for feminist scholarship. The discussion of feminist critique of the values of home in Part III of this article highlighted the possibilities for feminist scholarship to explore the potential benefits of home for women, with a view to re-analyzing home as a positive phenomenon. Yet, while there are strong arguments to support the project of re-assessing the meanings and values of home from a feminist perspective, the argument set out in Part III emphasized the difficulties associated with *home* as a privilege and the importance of ensuring that any re-construction of *home* is as a universal value. The argument set out in Part III also emphasized the importance of avoiding an idealized view of the meanings and values that home represents to women, but rather of re-conceiving home by

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347. Warren, *Bankrupt Children*, *supra* note 214, at 1006.

348. *Id.* at 1004.

349. *Id.* at 1006.

350. *Id.*

351. *Id.* at 1013.

352. *Id.* at 1017.

353. *Id.* at 1006.

354. *Id.* at 1005.

355. *Id.*

taking a real measure of the experiences, needs, and attachments of occupiers, including women occupiers. Specifically, when considering the political, cultural, social, and economic privileges associated with homeownership, it was suggested that there might be a good reason for feminists to reject the idea of *home* if the benefits associated with homeownership were found to be unequally available to women.

This section has argued, however, that gender does not *directly* determine the availability and sustainability of homeownership. Rather, income and general economic well-being are much more significant in determining both access to, and success in sustaining, homeownership. For many women, successful homeownership has provided an opportunity to achieve security and to accumulate wealth. Yet, on the other hand, the significance of gender (particularly for female-headed households, including single custodial mothers) is also clearly embedded in measures of income and general economic well-being. This has important implications for the development of the feminist concept of home. On the one hand, the desire to overcome barriers to homeownership is an important social and public policy goal. Yet, as feminist scholarship seeks to reconfigure the relationship between the putative benefits of homeownership and the demands that women are exposed to in order to realize those benefits, the risks — both practical and financial risks, as well as the psychological, emotional, and socio-cultural impacts of losing one's home at the hands of a creditor — must also be weighed in the balance.

#### V. GENDER DIFFERENCES IN THE MEANINGS OF HOME

The introduction to this article noted that the meanings and values of home, as identified in a wide range of cross-disciplinary studies, can be broadly classified into five clusters of value types: 1) home as a financial asset, 2) home as a physical structure, 3) home as territory, 4) home as identity, and 5) home as socio-cultural asset.<sup>356</sup> It was also noted that while these meanings are generally expressed as positive attributes, not all occupiers experience home as a repository of shelter, security, control, privacy, and identity.<sup>357</sup> Feminist analyses of the negative aspects of home have traditionally focused on home as a place of danger, insecurity, and inequality.<sup>358</sup> This section explores an additional source of negative responses to *home* for women, rooted in the emotional and psychological insecurity

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356. Fox, *Meaning of Home*, *supra* note 20, at 590.

357. Balfour & Smith, *supra* note 179, at 176.

358. FOX, CONCEPTUALISING HOME, *supra* note 20, at 363.

associated with the risk of losing one's home through a creditor possession action. While the discussion in Part IV emphasized the central role of income, rather than gender *per se* in determining both access to, and sustainability of, homeownership, this section reviews the links between gender and home from another perspective, by focusing on the issue of gender difference in the *experience* of losing one's home — or feeling at risk of losing one's home — as a result of bankruptcy or mortgage default.

### *A. The Significance of Gender in the Meanings of Home*

Empirical studies evaluating the experience of home have often explored the question of gender differences in the experience of home for the occupants.<sup>359</sup> While there have been some differences in emphasis between these studies, it is interesting to note that, by and large, the research indicates a general consensus that meanings of home are broadly comparable across gender lines.<sup>360</sup> Any differences that have been identified tend to be merely differences in emphasis across value types.<sup>361</sup> For example, Smith identified a high degree of consensus between men and women in the values associated with their home environments.<sup>362</sup> She claimed "[a] comparison of men's and women's responses to a request to describe the present home suggests that both groups are responding in a similar fashion."<sup>363</sup> When talking about their homes in this study, both women and men tended to identify characteristics such as continuity, privacy, self-expression and personal identity, social relationships, warmth, and the importance of a suitable physical structure.<sup>364</sup> Yet, while Smith's findings indicated that male and female respondents drew upon the same bank of home meanings,<sup>365</sup> she claimed that some of these values, both positive and negative — security, a sense of belonging, and dissatisfaction with their domestic role — appeared to be particularly salient for women.<sup>366</sup>

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359. See CSIKSZENTMIHALYI & ROCHBERG-HALTON, *supra* note 187, at 129; Darke, *Househunting*, *supra* note 197, at 49; Craig Gurney, ". . . Half of Me was Satisfied": *Making Sense of Home Through Episodic Ethnographies*, 20 WOMEN'S STUD. INT'L F. 373, 374-75 (1997); Madigan et al., *supra* note 220, at 625; Saegert, *supra* note 176, at 287-307; Smith, *supra* note 164, at 34-36.

360. See sources cited *supra* note 359.

361. *Id.*

362. Smith, *supra* note 164, at 45.

363. *Id.* at 36.

364. *Id.*

365. *Id.* at 34.

366. *Id.* at 39.



Another distinction to emerge from Smith's study was the difference between the emotional and physical reactions of men and women to the home environment.<sup>367</sup> Smith claimed that the "atmosphere in the home [was] mentioned more frequently by women, and the physical location of the home mentioned more by men."<sup>368</sup> This distinction was also supported by empirical studies conducted by Saegert and Csikszentmihalyi and Rochberg-Halton, both of which identified broadly similar home meanings across genders, but which suggested greater emphasis on the *house* for men (as a physical structure and a financial asset), whereas women tended to highlight the "x-factor" characteristics of home (as territory, as identity, and as socio-cultural signifier), within an emotional and relational framework.<sup>369</sup>

Csikszentmihalyi and Rochberg-Halton's analysis of feelings about home among adults (women and men) and children (girls and boys) also found that "children of both sexes start out with a warm emotional attachment to the home. This attachment continues to be strong for women, whereas men essentially cool out in their relationship with the home."<sup>370</sup> The positive aspects of home that were identified by the children who participated in this study tended to revolve around the role of the home as a source of "physical and emotional security, coupled with a sense of freedom that permits them to expand and yet to be private."<sup>371</sup> In relation to men's responses, the authors claimed that the focus was on "home as an investment asset" and "home as physical structure."<sup>372</sup> The authors related this difference to "the instrumental roles adult males play in our society."<sup>373</sup> They noted that "fathers extensively talk about the work they put into the home. New kitchens, new roofs, and new plumbing take precedence in their descriptions."<sup>374</sup> Yet, although the emphasis in these descriptions was on the physicality of the house, it is interesting to bear in mind the link between physical structure and "x-factor" meanings — for example, identity — for the men in this study. Csikszentmihalyi and Rochberg-Halton suggested that "[t]he house, for men, becomes a concrete embodiment of all the psychic energy they have invested

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367. *Id.* at 44.

368. *Id.* at 36.

369. CSIKSZENTMIHALYI & ROCHBERG-HALTON, *supra* note 187, at 127-31; Saegert, *supra* note 176, at 289-90.

370. CSIKSZENTMIHALYI & ROCHBERG-HALTON, *supra* note 187, at 129.

371. *Id.* at 129.

372. *Id.* at 130.

373. *Id.* "[T]hese changes reflect the fact that adult males learn to react to any type of relationship less in terms of feelings; thus their emotional neutrality concerning home is an indication of a more general dulling of affect rather than neutrality specifically about the home." *Id.* at 129.

374. *Id.* at 130.

in it . . . in the form of money. Thus the house represents the accomplishments of the owner's self."<sup>375</sup> This depiction of "the house" in fact suggested that *home* held symbolic importance for men, although this was more likely to be expressed in terms of money or physical structure than in terms of "x-factor" values.<sup>376</sup> Women, on the other hand, were described as "see[ing] the house primarily as a place where people interact with each other; when the home is seen in positive terms, it is because the interaction is harmonious."<sup>377</sup> This "relational" paradigm was also endorsed by Darke, who argued that "[t]he home was certainly seen as part of the emotional sphere and, particularly for women, was inseparable from significant life-events that had taken place there, from childbirth to relationship breakdown."<sup>378</sup>

The idea that women were more concerned than men with *security* within the home territory was mentioned in Smith's study.<sup>379</sup> Smith claimed that, while the positive meanings of home were, on the whole, very similar for women and for men, "[t]he issue of security was addressed by a quarter of the women and none of the men, . . . suggesting that for some women at least, feeling secure at home is something they would like to preserve."<sup>380</sup> Saegert also emphasized the territorial meanings of "home-as-anchor" for women.<sup>381</sup> There is, however, some ambiguity surrounding the weight attached to these specific home meanings by women. For one thing, although Smith presented the focus on security by women as a positive value, it could, alternatively, be regarded as "impl[ying] the world requires being hidden from."<sup>382</sup> By the same reasoning, the (*prima facie* positive) idea of "home-as-anchor" could alternatively be attributed to "assignment to and identification with domestic duties and . . . [women's] greater fear of crime and harassment in the world away from the home."<sup>383</sup> Smith also noted that "[i]n looking at the personal themes, a greater proportion of women expressed dissatisfaction with present levels of freedom and privacy, with themselves, or with their present roles within the home."<sup>384</sup> Yet, she concluded that, despite some evidence

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375. *Id.*

376. *Id.*

377. *Id.* at 132.

378. Jane Darke, *Women and the Meaning of Home*, in HOUSING WOMEN, *supra* note 212, at 11, 13 [hereinafter Darke, *Women and the Meaning of Home*].

379. Smith, *supra* note 164, at 38.

380. *Id.*

381. Saegert, *supra* note 176, at 290.

382. *Id.*

383. *Id.*

384. Smith, *supra* note 164, at 39.

of dissatisfaction in women's home experiences, "[t]he greater emphasis on the sense of belonging at home by women lends support for the theory that women identify with the home environment to a greater extent than do men."<sup>385</sup>

The idea that *home* is an ambiguous phenomenon, connoting both positive and negative values, has been a common theme in critical gender analyses of the concept of home. One study that focused on the experience of home for lesbians and gay men concluded that "'home' is comfort and discomfort, safety and danger, ontological authenticity and security and threats and challenges to the experience of 'being myself,' of insecurity and anxiety. 'Home' is ambivalent."<sup>386</sup> The ambivalence of home also has interesting connotations for the analysis of gender, debt, default, and foreclosure. The challenges to affordability, which have been highlighted by the recent mortgage lending crisis,<sup>387</sup> have highlighted the complexity of the costs and benefits of ownership according to the financial strength or vulnerability of the occupiers and their ability to sustain homeownership. Moran has argued, however, that "[a] key task that lies ahead is not to abandon the idea of home or to reduce it to a new impoverished myth of the unsafe home, but to complicate the issue of 'home.'"<sup>388</sup> The following sections seek to contribute to this project by considering the relationships between gender, home meanings, and the putative benefits of homeownership in the context of mortgage default, creditor possession actions, foreclosure, and bankruptcy.

### *B. Gender, Homeownership, and Ontological Security*

The idea that the meanings and values of home — particularly around the *x*-factor meanings such as safety, autonomy, and control — may differ according to gender has been analyzed in a range of studies focusing on the impact of homeownership in enhancing occupiers' ontological security.<sup>389</sup> Yet, where commentators have identified gender differences in home meanings, this has tended to reflect the *availability*, rather than the *desirability*, of home meanings for women, particularly in relation to the ability to pay.<sup>390</sup> Indeed, it is interesting to note that the empirical research has never questioned the possibilities for women to hold positive home meanings; rather,

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385. *Id.* at 44.

386. Moran, *supra* note 29, at 283.

387. Bajaj & Story, *supra* note 68.

388. Moran, *supra* note 29, at 296.

389. See Darke, *Househunting*, *supra* note 197, at 48; Gurney, *supra* note 359, at 373.

390. See Darke, *Househunting*, *supra* note 197, at 48; Gurney, *supra* note 359, at 376.

studies which have analyzed home meanings and ontological security by gender have emphasised the issues around accessibility and sustainability.<sup>391</sup>

The idea that owners experience home in a more positive way than renters underpins much of the political ideology of home as it has been presented to the public.<sup>392</sup> Owning, the argument goes, is more likely to enhance the occupier's feelings of security, including ontological security, as well as promoting the development of a stronger sense of autonomy and control in relation to their homes.<sup>393</sup> Yet it is interesting to note that Madigan, Munro, and Smith's 1990 study indicated that the gender dimensions of home for ontological security were in fact stronger than the tenure dimensions, so that "gender-differentiated household type is a much more powerful predictor of individual fear than is housing tenure."<sup>394</sup> If it is the case that owners benefit from enhanced ontological security compared to renters, this study suggested that women are less likely to benefit than men, as women tend to have less power and less control over their own housing, as well as less control over the household's finances.<sup>395</sup> These features of home life appeared to reverberate in home meanings, as Madigan, Munro, and Smith argued that "[f]or men, home ownership may be a means of gaining control over the material conditions of life; and control over social relations within the domestic sphere, occasionally manifest as violence. The higher levels of insecurity associated with home occupancy by women might partly be accounted for by this."<sup>396</sup>

Yet, to the extent that this argument relies on household patterns and dynamics, it is subject to reconsideration as changing patterns of income and intra-household control by gender undermine the proposition that gender *per se* presents a barrier to the benefits of home (including control). The rise of low-income homeownership,<sup>397</sup> as well as considerable differentiation in the income and wealth

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391. Darke, *Househunting*, *supra* note 197, at 48; Gurney, *supra* note 359, at 373.

392. For further discussion of the political ideology of home ownership in the U.S., see Lorna Fox, *Homeownership, Debt and Default: The Affective Value of Home and the Challenge of Affordability*, in AFFORDABLE HOUSING AND PUBLIC/PRIVATE PARTNERSHIPS (Robin Paul Malloy & Nestor Davidson eds., forthcoming 2008).

393. See SAUNDERS, *supra* note 39, at 8; Rakoff, *supra* note 187, at 85; Smith, *supra* note 164, at 36-38. *But see* Peter Marcuse, *The Ideologies of Ownership and Property Rights*, in HOUSING FORM AND PUBLIC POLICY IN THE UNITED STATES 41, 49-50 (Richard Plunz et al. eds., 1980).

394. See Madigan et al., *supra* note 220, at 641.

395. *Id.*

396. *Id.* at 642.

397. Gyourko, *supra* note 321, at 466.

spread across gender,<sup>398</sup> reinforces the argument that access to the benefits of homeownership is not now determined by gender, but by the ability to pay.

Darke's research into meanings of home by gender has also reinforced the suggestion that financial issues — for example, the risk of defaulting on a secured loan — have a major impact on the way in which women view *home*.<sup>399</sup> One participant described "a set of negative feelings associated with the mortgage being a burden and the home being a 'millstone.'" <sup>400</sup> While successful women home buyers reported "pride and a sense of security in attaining a home of one's own, which appeared to be particularly significant for single women householders," <sup>401</sup> this study also reinforced the idea that home is ambiguous. Darke reported that women experience "a mixture of affection, reciprocated towards the home as a nurturing environment, and resentment at the demands of home." <sup>402</sup> These demands come into sharp relief when households go into default. Part VI proceeds to consider the significance of gender when the financial demands that home imposes are heightened by challenges to affordability and exposure to the risk of default.

## VI. DEBT, DEFAULT, AND REPOSSESSION ACTIONS

Mortgage default and repossession are clearly matters of considerable personal stress and distress for the occupiers of the home. A considerable body of research literature has developed in recent years exploring the mental and physical health implications of living with mortgage arrears and the experience of repossession.<sup>403</sup> This research indicates "the social, social psychological and health-related consequences of mortgage possession are both dramatic and overwhelmingly negative." <sup>404</sup> Typical characteristics of the experience of arrears and repossession, which include living with debt, uncertainty, and lack of control — "a stressful life event" — also "suggests that the psychosocial mechanisms may be as important in explaining health

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398. McDowell, *supra* note 317, at 839-40.

399. Darke, *Women and the Meaning of Home*, *supra* note 378, at 14.

400. *Id.*

401. *Id.* Darke concluded that "even when the domestic role is experienced as burdensome, a mesh of internalised social constraints makes it almost impossible to relinquish: the identification with the home is too great. The socialisation process that gives rise to this leaves an imprint at the psychoanalytic level." *Id.* at 21.

402. *Id.* at 11.

403. See Nettleton, *supra* note 63, at 47-48; Nettleton & Burrows, *supra* note 63, at 465.

404. JANET FORD, ROGER BURROWS & SARAH NETTLETON, *HOME OWNERSHIP IN A RISK SOCIETY: A SOCIAL ANALYSIS OF MORTGAGE ARREARS AND POSSESSIONS* 113 (2001).

inequalities as the physical effects of material deprivation.”<sup>405</sup> Nettleton has noted that “stressful life events, and this includes the anticipation of events, are associated with both physical and mental health.”<sup>406</sup> Thus, it is argued, the experiences of being in arrears on mortgage payments, living with debt, and the incipient threat — or even ultimately the reality — of repossession, are potentially damaging to the occupier’s physical and mental health:

Psychosocial factors have a negative impact on health when associated with a sudden and dramatic change or life event and where a high stress environment is endured over the long term. Such changes are made worse when there is a lack of control over events and circumstances. All these features — long term insecurity, lack of control, changed social status and financial stress — are intimately bound up with the social processes of mortgage possession.<sup>407</sup>

Meanwhile, empirical findings from a range of studies conducted in various jurisdictions which have strongly promoted owner occupation, including low-income homeownership, have highlighted a rise in “normal”<sup>408</sup> levels of debtor default and creditor possession actions.<sup>409</sup> Nettleton has argued that the combination of higher levels of exposure to repossession and evidence concerning the effects of losing one’s home at the hands of a creditor have now made it “reasonable to suggest that mortgage possession and mortgage debt constitute a growing public health problem.”<sup>410</sup>

405. Nettleton, *supra* note 63, at 55.

406. *Id.* at 56.

407. *Id.*

408. That is, in the absence of economic downturn.

409. See FORD ET AL., *supra* note 404, at 21 (“[T]owards the end of the 1980s four processes did combine to produce a substantial growth in mortgage arrears and possessions in Britain.”); Mike Berry, *Unravelling the “Australian Housing Solution”: the Post-War Years*, 16 HOUSING, THEORY & SOC’Y 106, 107 (1999) (“From the early 1970s onwards and particularly over the past 15 years, housing provision in Australia, both as a process and as a set of outcomes, has become more uncertain, volatile and problematic.”); Mia Bjork, *Investigating the Experience of Repossession: A Swedish Example*, 9 HOUSING STUD. 511, 512 (1994) (“[T]he number of foreclosures in Sweden was limited at the end of the 1970s. By the mid-1980s the number started to grow . . . , then it nearly disappeared at the end of the decade only to return even more significantly in the 1990s.”); Philip Potter & Marlis Drevermann, *Home Ownership, Foreclosure and Compulsory Auction in the Federal Republic of Germany*, 3 HOUSING STUD. 94, 94 (1988) (“In the Federal Republic of Germany in the 1980s an increasing number of home owners have been getting into difficulties with their mortgage payments. The number of home owners falling into arrears has increased steadily since 1980.”); Roberto G. Quercia & Michael A. Stegman, *Residential Mortgage Default: A Review of the Literature*, 3 J. HOUSING RES. 341, 341-42 (1992) (“This article traces our evolving understanding of residential mortgage default risk [in the United States] from the early studies to the current literature.”).

410. Nettleton, *supra* note 63, at 56.

This section considers evidence from some recent empirical studies that have explored the gender dimensions of being in debt, falling into arrears, and becoming vulnerable to the risk of losing the home at the hands of a creditor. While this issue has not yet been explicitly addressed in the United States, studies conducted in the United Kingdom have explored both the impact of debtor default and possession actions on women's roles within two-adult households, and the psychological, emotional, and health consequences of living with arrears and of loss of home through repossession for women living in all types of households.<sup>411</sup> Of course, as the argument in Part IV has indicated, the experiences of women as homeowners — and, particularly, the question of whether their experiences as home buyers yield positive home meanings such as security, identity, and privacy — is inextricably linked with income levels and general financial well-being. It is clear, however, that when any household is exposed to the threat of repossession, the positive attributes of home may be overtaken by negative emotions, including fear and insecurity.<sup>412</sup> This section considers the argument that there is a gender differential in the way in which these negative emotions associated with default and repossession are experienced by occupiers.

*A. Managing Debt and the Risk of Default: Children, Custodial Parents, and the Politics of "Care and Dependency"*

Low-income households are generally regarded as being at a higher than average risk of falling into arrears and facing the threat of possession actions.<sup>413</sup> It is perhaps unsurprising to learn that, in addition to this, the effects of being in arrears are particularly acute for low-income households.<sup>414</sup> For example, Nettleton's research indicated that when low-income households experience problems with debt, they are often forced to "forego necessities such as food and fuel, especially in households with children where parents have been found to prioritize their children's needs over and above their own."<sup>415</sup> This provides an interesting echo to Warren's argument about the relationships between caring for children and bankruptcy.<sup>416</sup> It would appear that households with children are not merely at a greater risk of bankruptcy, but that the effects of debt are more severe in households with

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411. See Hazel Christie, *Mortgage Arrears and Gender Inequalities*, 15 HOUSING STUD. 877 (2000).

412. See Nettleton, *supra* note 63, at 55-56.

413. Christie, *supra* note 411, at 882.

414. KEMPSON, *supra* note 63, at 113-14.

415. Nettleton, *supra* note 63, at 54.

416. Warren, *Bankrupt Children*, *supra* note 214, at 1025.

children.<sup>417</sup> Custodial parents must cope with the additional stress of worrying about how children will be affected by the experience — socially, educationally, and physically<sup>418</sup> — and empirical research has also indicated that custodial parents are much more reluctant to accept the inevitability of repossession and to voluntarily give up the property when the consequences include surrendering their children's home.<sup>419</sup> While a rational response for an occupier facing the risk of repossession might be to voluntarily give up the property to move to a more affordable home, there is evidence that this is more difficult for custodial parents.<sup>420</sup> Warren has suggested that:

To face economic reversals for oneself may be much easier than imposing those reversals on someone else, especially a much-loved child. To give up an expensive home may be hard enough for an adult, but when it means that a child may be forced to change schools and leave friends, resistance may deepen.<sup>421</sup>

Of course, there are also important issues to be explored in relation to the effects of being in debt and living in arrears on the child occupiers themselves.<sup>422</sup> However, leaving that aside, the particular emphasis on the effects of losing the home for adults who are involved in caretaking relationships with children (or other dependents) also raises important issues for the feminist re-visioning of the meanings and values of home. The value attributed to caretaking work, including the importance of care-giving and dependency as central concepts for the definition of family, are major themes in contemporary feminist legal scholarship.<sup>423</sup> Martha Fineman, one of the most prolific advocates of the importance of relationships of care and dependency in legal and social conceptions of the family, has articulated the argument that caretaking labor should be valued by focusing on the

417. *Id.* at 1006.

418. SARAH NETTLETON, ROGER BURROWS, JUDE ENGLAND & JENNY SEEVERS, *LOSING THE FAMILY HOME: UNDERSTANDING THE SOCIAL CONSEQUENCES OF MORTGAGE REPOSSESSION* 42-51 (1999).

419. Christie, *supra* note 411, at 896.

420. Warren, *Bankrupt Children*, *supra* note 214, at 1023.

421. *Id.*

422. For a detailed analysis of the issues concerning child occupiers, the relationship with their homes, and the effect of loss of home for children, see FOX, *CONCEPTUALISING HOME*, *supra* note 20, at 409-50.

423. See MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* 8-9 (1995) [hereinafter FINEMAN, *THE NEUTERED MOTHER*]; Martha Albertson Fineman, *Contract and Care*, 76 CHI.-KENT L. REV. 1403, 1406, 1409-13 (2001) [hereinafter Fineman, *Contract and Care*]; Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy and Self-Sufficiency*, 8 AM. U. J. GENDER SOC. POL'Y & L. 13, 16, 18-22 (2000) [hereinafter Fineman, *Cracking the Foundational Myth*].



valuable service that caretaking work — for example child care — provides to society as a whole.<sup>424</sup> Furthermore, Fineman argued that because society as a whole benefits from caretaking labor, the costs associated with caretaking should be spread across society.<sup>425</sup> Thus, Fineman argues that "[t]aking care of someone such as a child while they are young . . . is work, represents a major contribution to society, and should be explicitly recognized as such."<sup>426</sup> This analysis rejects the construction of the family as a private institution and caretaking as a private responsibility,<sup>427</sup> but views the work of caring for dependents as a "public good."<sup>428</sup>

The importance of caretaking as the touchstone of the "core family unit" also led Fineman to reject the emphasis, in law and in policy, on the conjugal relationship between partners, but to focus instead on the "mother-child formation" — the relationship of care and dependence — as the "natural" or core family unit.<sup>429</sup> Although Fineman's concept of caregiving was de-gendered,<sup>430</sup> she also recognized that the lion's share of caregiving labor is, as a matter of fact, shouldered by women. For example, in *Contract and Care*, Fineman claimed that:

One focus for the dissatisfaction with the privatization of dependency is the continuing unequal and gendered division of family labor, which burdens women more than men. Within the family, there is also delegation of responsibility for dependency — caretaking has traditionally been and largely remains gendered work, assigned to those in the family roles of wife, mother, grandmother, daughter, and daughter-in-law.<sup>431</sup>

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424. See FINEMAN, THE NEUTERED MOTHER, *supra* note 423, at 9; see also MONA HARRINGTON, CARE AND EQUALITY: INVENTING A NEW FAMILY POLITICS (1999) (analyzing the necessity of valuing caregiving in the pursuit of gender equality); ROBIN WEST, CARING FOR JUSTICE (1997) (discussing and arguing against the exclusion of women's work and interests, and moral voice from the law).

425. FINEMAN, THE NEUTERED MOTHER, *supra* note 423, at 9.

426. *Id.*

427. For example, in *Contract and Care*, Fineman argued that dependency warrants a more public, supportive, and collective response to the needs of caretakers. This assertion is grounded in an obvious social fact: caretaking work supplies an important and essential public good. Every society and every institution in society is dependent upon caretaking labor in order to perpetuate and reproduce itself.

Fineman, *Contract and Care*, *supra* note 423, at 1406.

428. *Id.*

429. FINEMAN, THE NEUTERED MOTHER, *supra* note 423, at 5.

430. *Id.* Fineman makes it clear that the terminology of "mother" as she applies it to refer to the care-taker is not tied to gender, and either men or women can choose to be (or not to be) mothers. *Id.*

431. Fineman, *Contract and Care*, *supra* note 423, at 1406.

The traditional difficulties posed by the idea of "home as women's place" and, by extension, with the idea that feminist scholarship could embrace the concept of home as a positive phenomenon for women, included the designation of home as a private space in which women were obliged to carry out "women's work," serving, nurturing, and maintaining men and children.<sup>432</sup> As the discussion in Part III has noted, the demands imposed by women's caretaking work within the home were also instrumental in denying women a role in the public sphere.<sup>433</sup> From this perspective, it was not surprising that feminist scholarship rejected the idea of home.

The proposition that the work of caretaking is unequally carried out by women is also significant in relation to experiences of debt and default. For one thing, empirical studies have clearly indicated that the work that must be done by caretakers is increased when a household experiences problematic debt.<sup>434</sup> Furthermore, the demands imposed on occupiers to manage household finances once the risk of default is manifest appear to be greater for women than for men.<sup>435</sup> Although this work could, in theory, be carried out by either women or men, there is some evidence to suggest that in reality the burden of dealing with debt falls disproportionately on women.<sup>436</sup> For example, Nettleton reported that, in her study of families living with debt, "[s]imply making ends meet becomes a full time job which pre-occupies the minds of people most of the time — and this seems to be especially so for women."<sup>437</sup>

In addition to the work involved in managing a household that is struggling with debt, other features of living with debt include social isolation, strain on personal relationships, and feelings of shame and stigma,<sup>438</sup> all of which have been identified as factors contributing to poor health.<sup>439</sup> A further cause of stress for occupiers at risk of repossession is the uncertainty, insecurity, and lack of control that characterize such processes and that feed into the potentially adverse health implications of living with debt.<sup>440</sup> Empirical research in the United Kingdom has indicated that for households living with debt, once they were confronted with the risk of losing their homes through creditor possession actions, they "were rarely able to plan, or exert any

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432. FINEMAN, *THE NEUTERED MOTHER*, *supra* note 423, at 233.

433. See *supra* Part III; see also FINEMAN, *THE NEUTERED MOTHER*, *supra* note 423, at 26.

434. *Id.* at 108.

435. See Nettleton, *supra* note 63, at 54.

436. *Id.*

437. *Id.*

438. *Id.*

439. *Id.* at 56.

440. *Id.* at 55-56.

control over the nature and location of their post possession housing, and . . . they found it difficult to exert any control over the processes involved in the transition from owner occupation to renting."<sup>441</sup>

It is significant to note, once again, that the effects of this uncertainty and lack of control are heightened when the household includes children.<sup>442</sup> Christie's survey of households facing repossession found that the desire to maintain the *status quo* was particularly strong in households that included children, as they "were more likely to want to stay put, regardless of how they now viewed the house and all the associated financial problems."<sup>443</sup>

When evaluating the significance of gender in this context, it is also interesting to note that empirical research suggests that, as well as having different attitudes towards being in debt and falling into arrears, women and men adopted different strategies for the management of mortgage arrears.<sup>444</sup> Christie's analysis of the experience of living with arrears and the effect of debt on gender dynamics within households experiencing arrears, indicated that "gender relations are renegotiated and redefined in the process of putting together [coping strategies], and that change is not necessarily progressive."<sup>445</sup> This reflects the suggestion that in two-adult households, while men tend to *control* household finances, women were more likely to bear the responsibility for the work of *managing* the family's money.<sup>446</sup> In fact, there is also specific evidence to suggest that women are more likely to take over responsibility for household finances when paying bills becomes problematic, and this is also supported in the context of mortgage arrears.<sup>447</sup> Christie's study indicated that, once a household had fallen into arrears, women living in two-adult households tended to bear the greater burden of coping with arrears.<sup>448</sup> She found that "women are more likely to manage the day-to-day finances, to use the income they receive directly on the family and to report higher levels of stress and worry about money."<sup>449</sup> Even more significantly, the

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441. *Id.* at 55.

442. Christie, *supra* note 411, at 896.

443. *Id.*

444. *Id.* at 878.

Women and men often devise different — and very unequal — strategies for managing household finances, as well as holding different attitudes towards both debt and home ownership. This points towards the possibility that living with mortgage arrears might lead to a fragmentation of experiences within the household, including a potential widening of gender inequalities.

*Id.*

445. *Id.* at 879.

446. *Id.* at 898.

447. *Id.* at 881.

448. *Id.*

449. *Id.*; see also JACKIE GOODE, CLAIRE CALLENDAR & RUTH LISTER, PURSE OR WALLET?

responsibility for coping with arrears — that is, for managing the day-to-day finances, as well as bearing the greater burden of worry and stress — tended to fall on women, even in households in which family finances had previously been controlled by the male partner.<sup>450</sup> While the experience of living with arrears had a major negative impact on the whole family, she reported that “[o]ne of the most pronounced effects of default was to exacerbate the amount of financial work that had to be done within the home”<sup>451</sup> and that the burden for this extra work fell disproportionately on women.<sup>452</sup>

Christie’s research indicated that the additional burdens imposed on women in these circumstances were both practical and psychological.<sup>453</sup> From a practical perspective, women took responsibility for budgeting, for food shopping and preparation, and for managing the household on reduced family outgoings;<sup>454</sup> “[e]qually, they were the ones who worried about where the next meal was going to come from.”<sup>455</sup> The respondents identified all of these tasks as stressful and time-consuming.<sup>456</sup> Furthermore, in carrying out these functions, the women in the survey tended to put their children’s and their husband’s individual needs before their own.<sup>457</sup> Christie reported that, “[w]hile the standard of living of the entire household depended on the income women generated, they still risked their own health, and legitimated a notion of material altruism, by refusing to acknowledge their own needs.”<sup>458</sup>

Overall, it was apparent that women tended to take greater responsibility for living with arrears, while sacrificing their own individual well-being in order to sustain other members of the household.<sup>459</sup> In two-adult households, their role as caretakers meant that

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GENDER INEQUALITIES AND INCOME DISTRIBUTION WITHIN FAMILIES ON BENEFITS, at xii (1998) (noting women had the main responsibility for managing the families’ income).

450. Christie, *supra* note 411, at 898.

451. *Id.*

452. *Id.* Christie found that

women were more likely to have complete responsibility for the finances including the overall allocations of financial resources and the larger financial commitments of the household. Women had to balance this expenditure with the particular demands of the household, regardless of who had played the most active role in negotiating settlements or dealing with other creditors. The responsibility of having to manage the household budget, combined with the daily reminder of the implications of mortgage default, placed an additional burden on women.

*Id.* at 898.

453. *Id.*

454. *Id.* at 900.

455. *Id.* at 900.

456. *Id.* at 899.

457. *Id.* at 900.

458. *Id.*

459. *Id.*

women were more likely to assume responsibility for management of the family finances once arrears accrued, and to experience considerable stress and anxiety as a result of the risk — and sometimes the reality — of losing the home to a creditor.<sup>460</sup>

*B. The Adverse Effects of Possession Actions and Loss of Home*

The adverse consequences, both physical and psychological, of creditor possession actions and the loss of the owner-occupied home have been clearly established in housing literature.<sup>461</sup> Loss of one's home at the hands of a creditor is undeniably traumatic for women, for men, and for children; and these difficulties are often compounded as the occupiers pass through various stages of the repossession, foreclosure, or bankruptcy process. Problems usually begin with the accrual of arrears, but this in itself is often associated with other stressful life events, such as relationship breakdown, illness, unemployment, or even the death of a partner.<sup>462</sup> Christie's research found that the link between arrears and relationship breakdown also functioned to exacerbate gender inequalities within households.<sup>463</sup> Of the twenty defaulting households involved in her study, nine households had experienced relationship breakdown, as either the cause or an effect of falling into arrears.<sup>464</sup> Christie noted that the breakdown of these relationships also "contributed to new kinds of gender inequalities,"<sup>465</sup> as in six out of these nine cases, the male partner left the house, leaving the female partner in occupation and therefore with the ongoing responsibility of dealing with the practical and psychological impacts of arrears.<sup>466</sup>

The repossession process itself has been described as "a long process characterized by uncertainty"<sup>467</sup> and a defining feature for most occupiers is the loss of control.<sup>468</sup> Evidence from Christie's study indicated that "[w]orry and stress were intensified by going to court for a repossession hearing, to the extent that health and well-being of individual household members was affected."<sup>469</sup> It is arguable that these experiences may also have a stronger impact on women than

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460. *Id.* at 901.

461. *See supra* notes 410-460 and accompanying text.

462. Christie, *supra* note 411, at 901.

463. *Id.*

464. *Id.* at 886.

465. *Id.* at 901.

466. *Id.*

467. Nettleton, *supra* note 63, at 53.

468. *Id.* (citing, as examples, the policies and practices of lenders, the attitudes of judges, and the resources available to the households themselves).

469. Christie, *supra* note 411, at 899.

on men, if the lack of control resonates with existing feelings of insecurity, vulnerability, anxiety, apprehension, and fear that have been more generally associated with women's responses to incurring debt and default. Finally, it has been noted that:

[a]t the end of the day, the hardship incurred by these women was not likely to come to an end when the household was repossessed. Moving from one temporary home to another brings new sets of problems including repeated moves, living in poor estates, downward spiralling health profiles and disruption to children's schooling.<sup>470</sup>

The designation of the adverse health consequences of default and repossession as a "public" issue also resonates with feminist theories of care and dependency.<sup>471</sup> The ethic of care and dependency is embedded in the importance of recognizing, firstly, that the burden of caretaking activities is predominately carried by women, and that these burdens should more appropriately be viewed, not as a private matter, but should attract public subsidy and support.<sup>472</sup> However, in order for progress to be made on these issues, it is necessary to re-think our ideas about the home as a concept in feminist legal scholarship. The burdens of living with debt, being in arrears, and the risk of repossession have typically been regarded as "private tragedies" for the individuals and families whose homes and well-being are threatened; the home has been viewed as a paradigmatic private sphere, and this was a significant element underpinning the "traditional" feminist rejection of the idea of *home* as a positive phenomenon.<sup>473</sup>

In seeking to make progress toward the re-conceptualization of *home* for feminist scholarship, this article has argued that the concept of home could be reclaimed, but only as a site for individual subjectivity, and subject to the equal availability of the "universal value" of *successful* homeownership on gender grounds. In seeking to take a real measure of the experiences of women in relation to their homes, including their experiences of access to homeownership, the sustainability of homeownership, and the experiences of women with respect to debt, default, and bankruptcy, some interesting issues have emerged in relation to the idea of gender differentiation in the availability of home as a universal value. One key factor that has been

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470. *Id.* at 901; see also Rosalind Edwards, *Making Temporary Accommodation Permanent: The Cost for Homeless Families*, 15 CRITICAL SOC. POL'Y 60, 62 (1995); Jane Hopton & Sonja Hunt, *The Health Effects of Improvements to Housing: A Longitudinal Study*, 11 HOUSING STUD. 271, 271 (1996).

471. Fineman, *Contract and Care*, *supra* note 423, at 1405.

472. *Id.* at 1403.

473. *Id.*

identified in this article is the importance of income and general financial stability in ensuring, and sustaining, access to homeownership.<sup>474</sup> The obstacles that stand in the way of equal access to *home* are not gender issues *per se*, but are rooted in income and affordability.<sup>475</sup> Of course, as the discussion in Parts IV.B and IV.C has demonstrated, the issues of income and affordability have their own gender dimensions; however, this finding casts an interesting light on the treatment of "home" in feminist scholarship. The importance of engaging with poverty discourse is well-established in feminist legal theory, as evidenced by the extensive literature relating to the feminization of poverty.<sup>476</sup> However, when it comes to the particular experiences of women in relation to the loss of home, feminist analysis has been impoverished by a lack of attention.

This aspect of the argument for re-conceptualizing *home* for feminist scholarship was usefully captured in Robin West's description of "gendered harms." West claimed:

Women suffer harms in this culture that are different from those suffered by men. And partly because they are different, they often do not 'trigger' legal relief in the way that harms felt by men alone or by men and women equally do. As a result women are doubly injured: first by the harm-causing event itself, and second by the peculiarity or non-existence of the law's response to those harms.<sup>477</sup>

The research considered in this section has identified a gender differential relating to the way in which the harms associated with default and repossession are experienced by occupiers. West's argument that the harms experienced by women are often overlooked resonates strongly with evidence that the concept of home for feminist legal scholarship has been impoverished by a lack of engagement,

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474. See *supra* Part V.B.

475. See *supra* Part IV.B-C.

476. See generally THE FEMINIZATION OF POVERTY: ONLY IN AMERICA? (Gertrude Schaffner Goldberg & Eleanor Kremen eds., 1990) (examining how poverty has quickly become a female problem); HILDA SCOTT, WORKING YOUR WAY TO THE BOTTOM: THE FEMINIZATION OF POVERTY (1984) (discussing the growing number of families living below the poverty line that are headed by women); Sara S. McLanahan & Erin L. Kelly, *The Feminization of Poverty: Past and Future*, in HANDBOOK OF THE SOCIOLOGY OF GENDER 127 (Janet Saltzman Chafetz ed., 1999) (examining how poverty has become feminized); Meredith Minkler & Robyn Stone, *The Feminization of Poverty and Older Women*, 25 GERONTOLOGIST 351 (1985) (discussing poverty as it relates to older women); Ann Nichols-Casebolt, Judy Krysik & Ria Hermann-Currie, *The Povertization of Women: A Global Phenomenon*, 9 AFFILIA 9 (1994) (examining the social and economic well-being of women in industrialized and developing countries); Diane Pearce, *The Feminization of Poverty: Women, Work and Welfare*, 11 URB. & SOC. CHANGE REV. 28 (1978) (discussing poverty as a rapidly growing female problem).

477. WEST, *supra* note 424, at 96.

particularly from women's perspectives. By identifying the issues that underpin the disadvantage experienced by some women in accessing and sustaining positive relationships with home, this article has sought to highlight these gendered harms and to establish a new case for addressing this issue through re-casting the concept of home in feminist scholarship.

### CONCLUSION

While traditional feminist scholarship rejected the portrayal of *home* as "women's place," discourses in housing and home scholarship have suggested that home can be a meaningful site for women and that the growth of homeownership has provided greater opportunities for women and men to acquire positive values — both economic and non-economic — from their homes.<sup>478</sup> Yet, these positive meanings of *home* (and homeownership) are contingent on the financial ability to sustain that ownership by avoiding default on the repayment of debts secured against the property.<sup>479</sup> While empirical research has indicated that many women experience positive attachments to their home environments,<sup>480</sup> which they wish to sustain, and which are recognized in the call for a re-conceptualization of home within feminist scholarship, one of the key conceptual issues to have emerged in this context is the question of whether *home* remains a "privilege," in the sense that it is unequally available on grounds including gender.<sup>481</sup> If the idea of developing the concept of *home* as a feminist project is to flourish, one of the key conditions must be that *home* is re-configured as a universal value that is equally available to all.

Analysis of trends in gender and homeownership has indicated that while the rate at which women are entering homeownership has increased significantly, gender differences remain in relation to both access to homeownership and the ability to sustain homeownership.<sup>482</sup> For example, as the previous section has indicated, there is evidence to suggest that experiences of default and repossession may be particularly severe for women, including women living in two-adult households who are more likely to bear the responsibility for managing household finances in the event of default.<sup>483</sup> Yet, it is important that these findings should not be viewed as simply reinforcing

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478. See discussion *supra* Part III.

479. See discussion *supra* Part IV.C.

480. See *supra* notes 135-59 and accompanying text.

481. See discussion *supra* Part III.

482. See discussion *supra* Part VI.

483. *Id.*



the traditional feminist argument that home represents only negative values and experiences for women — fear, anxiety, insecurity, vulnerability, lack of power — and so ought to be rejected out of hand. Rather, it appears increasingly evident that women *do* value home as a positive phenomenon, so long as they can afford to pay and so avoid the negative experiences associated with debt, default, and repossession.<sup>484</sup> The object of this article is not to suggest that women “belong” in the home; rather, that the home can belong to women.

Yet, while it would appear that financially secure and upwardly mobile female home buyers have never had it so good, with higher rates of female homeownership and increased financial prosperity suggesting that many women are enjoying unprecedented independent access to homeownership,<sup>485</sup> there is also evidence to suggest that for many women who live in low-income households, the benefits of home, including homeownership, are still a privilege to which they do not enjoy equality of access.<sup>486</sup> The benefits and costs of homeownership are not distributed equally;<sup>487</sup> however, while women may experience disadvantages in accessing home because of economic factors, it is important to note that this inequality is rooted in *income*, rather than *gender*.<sup>488</sup> Although issues relating to income have obvious *de facto* gender implications, the focus on affordability as the pivot for this analysis has important implications for the feminist re-conceptualization of home and for the question of how to address the inequalities that have been identified.

One response to the *de facto* gender inequality that results from inequalities in income and affordability might be to argue for a specifically gendered response to defaulting occupiers. On the one hand, the fact that women are often negatively affected by structural socio-cultural inequalities in relation to their rights in the home raises an argument for providing some kind of additional, counterbalancing protection. However, on the other hand, the suggestion that women should be treated with “special tenderness” in law is problematic, as it bears undesirable connotations of female dependency and incapacity. Even the implicit idea that women are in need of additional protection in relation to their property rights would be a retrograde step, discriminatory and unjustifiable. As Kate Green and Hilary Lim have argued, given the choice of an automatic protection for women that treated them as especially “vulnerable” and “safely confined to their

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484. See discussion *supra* Part IV.

485. See *supra* notes 286-88 and accompanying text.

486. See *supra* notes 317-20 and accompanying text.

487. *Id.*

488. See discussion *supra* Part IV.B.

silent towers[,] . . . [they] might accept that the woman should not win against the bank.”<sup>489</sup> If the price of legal protection was to treat women as being less capable when it comes to participating in the public sphere — for example, by giving a valid consent to contracts for credit — then that price would be too high. “In the end, we would rather be constructed as a person who can move in and out of private and public roles than as one who inevitably needs the particular tenderness of equity. We do not want always to be victims.”<sup>490</sup>

Happily, the conceptualization of gender inequalities in relation to *home* through the lens of income ensures that it is not necessary to re-construct women occupiers as victims, as dependent on men, or as less able to contract for credit in order to address the issues associated with homeownership, debt, and default. Any “special protection” that might be accommodated within a legal concept of home would be more appropriately targeted at low-income households, rather than at women occupiers. This reflects the fact that the real problem in the context of the creditor/occupier dispute lies with the ability to pay, and the specific trigger factor by which some women (and some men) are systematically disadvantaged is income-related. This goal can be usefully underpinned by feminist re-visions of the meanings and value of *home* for women occupiers. By recognizing the potential of a concept of home that feminist scholars can lobby in support of, it would be possible to advance arguments in support of home without being obliged to retreat into dependency arguments or to assume the status of “victims,” or even necessarily to establish the home as “her place,” but simply by drawing upon the real consequences of losing the home through creditor possession procedures. This approach would enable feminist scholarship to work towards a real measure of the experience of home for women, recognizing that while home may offer positive associations for women, in order for these positive meanings to be realized as universal values, it is also necessary to focus on the negative consequences associated with default — and therefore with income and affordability — that threaten to undermine the meanings and values of home for some women.

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489. Kate Green & Hilary Lim, *Weaving Along the Borders: Public and Private, Women and Banks*, in FEMINIST PERSPECTIVES ON EQUITY AND TRUSTS 85, 98 (Susan Scott-Hunt & Hilary Lim eds., 2001).

490. *Id.*